QUARTERLY REPORT

of the

ATTORNEY GENERAL

of

ALABAMA

For the Period:

From October 1, 1935
Through December 31, 1935

VOL. I

TO ALL STATE AND COUNTY OFFICERS OF ALABAMA:

In accordance with an Act of the Legislature of Alabama found on page 1114 of the General Acts of Alabama, Regular Session, 1935, I am submitting to you the Quarterly Report of the Opinions of the Attorney General of Alabama. This report covers all opinions rendered by the Attorney General from October 1, 1935 through December 31, 1935.

The Act referred to above requires that six copies of this Quarterly Report be sent to each of the Probate Judges in the State and that the Probate Judge shall in turn deliver one volume each to the Clerk of the Circuit Court, the Sheriff, the Tax Collector, the Tax Assessor, and the County Superintendent of Education.

Respectfully,

A. A. CARMICHAEL,
Attorney General.

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OPINIONS

October 1, 1935.

Hon. J. Percy Oliver,
Judge of Probate, Tallapoosa County,
Dadeville, Alabama.

Constitutionality—Act No. 400, House Bill No. 883, approved September 9, 1935, amending Act approved July 17, 1931, relative to deputy sheriffs of Tallapoosa County, is constitutional and valid.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of Sepember 19, 1935, in which you request my opinion as to the constitutionality of Act No. 400, House Bill No. 883, approved September 9, 1935, amending an Act approved July 17, 1931, relative to deputy sheriffs of Tallapoosa County.

I am of the opinion that the Act in question is constitutional and valid.

Said Act, in my opinion, is not violative of Section 45 of the Constitution of 1901, which requires "that no law shall be revised, altered or amended by reference to its title only; but the Act revised, and the section or sections of the act altered or amended, shall be re-enacted and published at length."

The title of the Act under consideration provides as follows:

"To amend Sections 1 and 2 of an act approved July 17, 1931, entitled an act. To provide and require that the Sheriff of Tallapoosa County, Alabama, shall appoint and maintain a regular Deputy Sheriff at each of the following places in said county, to-wit: Dadeville, Alexander City and Tallassee. To prescribe the duties of such deputies and to provide for their compensation and the payment thereof by said county, and to fix the amount of such compensation."

It so appears that the title to the Act approved July 17, 1931, which is sought to be amended, varies from the title of the 1935 Act, as above set out, in that "East Tallassee" is used instead of "Tallassee."

In the body of the Act under consideration, Section 1 in amending Section 1 of the 1931 Act, in referring to the title of the 1931 Act, set out said title verbatim.

In the body of the Act under consideration Section 2 in amending Section 2 of the 1931 Act, in referring to the title of the 1931 Act, contained the same variance as the title of the Act under consideration in that "Tallassee" was used instead of "East Tallassee." However, the amended portion of Sections 1 and 2 of the Act under consideration, both properly referred to "East Tallassee".

The rule in respect to variances in the nature of those above set out is stated in 59 Corpus Juris, p. 862, which is as follows:

"Clerical Errors or Omissions.—Mere clerical errors or omissions in the reference to, and identification of, the act or statute to be amended will not invalidate the amendatory statute, where, notwithstanding such errors or omissions, the act or statute to be amended is pointed out with reasonable certainty. **Legislative enactments are not, any more than any other writings, to be defeated on account of mistakes, errors, or omis-**

sions, provided the intention of the legislature can be collected from the whole statute. This rule has been applied where there were errors in the statement of the title of the act amended which were too slight to mislead, or where the date of the amended act was incorrectly stated the amendatory act being otherwise sufficient to identify the act amended with reasonable certainty, in which circumstances the statement as to the date of the approval may be rejected as surplusage. So also an amendatory act will not be held invalid because it incorrectly states the name of the compilation in which the section designated as amended appears, or which states incorrectly the number of the act or chapter, or title, or section, amended, or states the number of the sections of a chapter without stating the number of the chapter amended, if it can otherwise be ascertained from the amendatory act with reasonable certainty what law is amended." (Italics supplied).
See also **Harper v. State,** 109 Ala. 28, 19 So. 857.

Applying the above rule to the instant case, it is my opinion that the variances in question may be treated as clerical errors for the reason that the legislative intent is clearly apparent. The Act sought to be amended, can be referred to with certainty, and the amended portion of said Act definitely refers to "East Tallassee". It is apparent that the Legislature intended to refer to "East Tallassee" throughout the Act rather than "Tallassee."

It has been held that a Local Act providing for additional deputy sheriffs is not violative of Section 68, 96, 104 (24), 105 and 281 of the Constitution of 1901.—**Court of County Commissioners v. Lightner,** 225 Ala. 22, 141 So. 908, and cases cited therein.

The Act in question is not vidative of Section 106 of the Constitution, in that it was duly advertised as a local bill.

Yours very truly,
A. A. CARMICHAEL
Attorney General.

October 3, 1935.

Hon. B. L. Malone,
Judge of Probate,
Morgan County.
Decatur, Alabama.

Section 368½ of the Revenue Act of 1935, repeals all exemptions from license taxes levied by such Act, except as specifically granted by such Act, including the exemption from State and County license granted to War Veterans by the Act of 1931.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 6 in which you state:

"Section 368½ of the new Revenue Act provides—

"The exceptions and exemptions from license or privilege taxes levied by this Act which are granted by this Act, are hereby declared to be exclusive, and any laws or parts of laws general, local or special, granting or attempting to grant any exceptions or exemptions, except as specifically granted herein are specifically repealed.

"Please advise if the above section repeals House Bill No. 833 exempting disabled veterans of the World War, Spanish American War and the Civil War, from the payment of business and occupation licenses and also advise if House Bill No. 193 exempting blind persons from the payment of privilege license is repealed by said section."

In reply, I beg to advise that the language of Section 368½ which you quote is so clear and unequivocal that there is only one construction can be had; namely, that any exemptions, including, of course, those authorized by the so-called Veterans' Act of 1931, except as set out in the 1935 Act, are repealed, so far as State and County licenses are concerned.

This is the action of the legislature, and the language expresses a clear legislative intent. The wisdom of such action is one addressing itself purely to legislative discretion.

It is my information that the Legislature has passed, since the passage of the Revenue Bill, another Veterans' Exemption Act changing the provision of the 1931 Act. I have been unable to secure copy and hence cannot advise you of its provisions or effect.

Yours very truly,
A. A. CARMICHAEL,
Attorney General

October 3, 1935.

Hon. H. M. Couch,
Sheriff Marion County,
Hamilton, Alabama.

Counties not liable for water and lights used by the jailer or sheriff in preparing food for the inmates of the jail.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of September 6, 1935, in which you request my opinion as follows:

"Please give me an opinion as to whether it is the duty of the Commissioners Court of Marion County to pay the light and water bills for the home of the jailer who lives in a house built by the county for the use of the jailer and sheriff, the sheriff also lives in this house with the jailer and the food for the prisoners is cooked and prepared in this house."

The case of Holcombe v. Mobile County, 155 So. 640 seems to settle the matter you are inquiring about. While it is true this opinion is dealing with the furnishing of fuel for cooking and preparing food for inmates of the county jail, yet the reasoning here employed would, I think, apply to lights and water furnished for the same purpose. In the case above cited, our Supreme Court holds that Section 4878 of the Code of Alabama, 1923 cannot be construed so as to include fuel used for preparing meals for inmates of the County jail. It says in part as follows:

"Section 4878. Code, relates only to the expense of construction, maintenance, sanitation, healthfulness, and hygiene of the buildings named. The term 'maintenance' there has no relation to the prisoners,

but to the jail and its equipment. That term so used would no more require the county to furnish fuel to cook the food than to furnish the food itself. To extend it beyond maintenance of the building and its equipment would go beyond its language, and its setting, and be contrary to the terms of the Acts of 1923 and 1927, supra.

"The provision of section 4 of the Act of 1923, as amended in 1927, that the state shall pay a stipulated amount for 'preparing and serving' the food, necessarily means the preparation for its service, as well as its service, and that includes the fuel for cookiing as well as the cook, since it is not prepared for service until it is cooked, when cooking is necessary to its consumption as food.

"Moreover, the Act of 1923 excludes the idea that the expense, or any of it, shall be otherwise paid than as there stated."

It might be well to call attention to the fact that the above opinion overrules an opinion of this office of May 30, 1929, Biennial Report of Attorney General 1928-1930, page 421, and is in line with a recent opinion of this office to Hon. F. B. Thompson, Judge of Probate, Ashland, Alabama. See Book 3-A Office Edition, page 179.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 3, 1935.

Hon. Frank M. Johnson,
Judge of Probate,
Winston County,
Double Springs, Alabama.

Courts of County Commissioners—Appropriation of gasoline tax to County Department of Public Welfare created by Act No. 332, Senate Bill No. 365, approved August 27, 1935.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of September 7, 1935, in which you request my opinion as to whether or not the County Board of Revenue, Court of County Commissioners or other governing body of the county can legally use the county's share of the gasoline tax for appropriation to County Department of Public Welfare created under Act No. 332, Senate Bill 365, approved August 27, 1935.

I am of the opinion that the answer to your inquiry is conditional up to October 1, 1935, and thereafter is in the negative.

The State and County Departments of Public Welfare were created by Act No. 332, Senate Bill No. 365, approved August 27, 1935. The authority of the County Board of Revenue, Court of County Commissioners, or other governing body of the county to appropriate funds to the County Department of Public Welfare is found in that part of Section 14 of the Act in question, which reads as follows:

" * * * The County Board of Revenue, Court of County Commissioners, or other governing body of the County and incoporated munici-

palities within the County shall make joint appropriations for office space, supplies, and for the maintenance of the functions to be performed by the County Department of the Public Welfare and shall mutually participate in the benefits thereof, but the amount to be appropriated by said governing body of the County and by each municipality shall be subject to the approval of the said governing body of the County and the participating municipality or municipalities. When federal and State funds are available for use by County Boards, they shall be allocated by the State Board. Due consideration shall be given in the allocation of these funds to population, extent of need and the financial conditions of the County."

The above appropriations by the county, in my opinion, contemplates an appropriation out of the general fund of the county and not out of the gasoline fund, or any other special fund unless otherwise specifically authorized. We must, therefore, look to the Acts authorizing the expenditure of the county's share of the gasoline tax in order to determine whether or not this fund may be used for the appropriation in question.

The only authority for the use of the gasoline fund by the county for purposes other than the construction, maintenance and repair of public roads and bridges in the respective counties, is found in Act No. 19, H. B. 88 approved January 31, 1935. Said Act levies a two cents tax, one cent of which is equally divided among the sixty-seven counties of the State. The authority for the use of said one cent tax by the county is found in Section 17 of this Act. Said section provides as follows:

"Section 17. That the proceeds from one cent of the tax herein levied shall be equally divided among the sixty-seven counties of the State of Alabama monthly as collected, less the actual cost of collecting the same, payment to be made to the County Treasurer or Depository of said counties on the 10th day of each month of the year; and said funds shall be used by the several counties of the State exclusively for the construction, maintenance, supervision and policing of the public roads and bridges in the respective counties; provided, however, that the Board of Revenue or other such governing body of a county may, at any time within twelve months from the passage of this Act, use at their option, subject to the approval of the Governor of the State of Alabama, any of such proceeds as collected for the purpose of matching any United States Government funds on any fair and reasonable basis that may be expended in said county"

It will be seen from the above that the Board of Revenue, or other county governing body, may, with the approval of the Governor, use this one cent tax for matching United States Government funds on any fair and reasonable basis that may be expended in said county. This is sufficiently broad, in my opinion, to cover the appropriation to the County Department of Public Welfare if done in strict compliance with Section 17, supra. However, this provision becomes inoperative on October 1, 1935, due to Schedule 156.11 of the Revenue Act of 1935, which becomes effective on that date. Schedule 156.11 supplements Act No. 19, H. B. 88, approved January 31, 1935, and provides for the use of the one cent tax distributed to the sixty-seven counties in the following manner:

" * * * and said funds shall be used by the several counties of the State exclusively for the construction, maintenance, supervision and

policing of the public roads and bridges in the respective counties; provided, however, that the Board of Revenue or other such governing body of a county may direct the State Tax Commission to pay over to the State Highway Department such part of said funds as may be agreed upon by the Board of Revenue or such other governing body of any county, and the Governor of the State of Alabama, which said funds are to be used in the construction and maintenance of roads in said county, to be agreed upon by the Board of Revenue of such county, or such other governing body, and the Governor of the State of Alabama."

This proviso, in my opinion, does not authorize an appropriation of the gasoline tax in question by the counties to the County Department of Public Welfare.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 3, 1935.

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Taxation:

1. Under Section 169-A of the Revenue Act of 1935, the Tax Collector may accept the payment of taxes on one parcel of real property, which is separately assessed, provided the taxpayer pays all taxes on his personal property and provided such payment is equal to or greater than 25 per cent of the total amount of taxes due by him as of October 1 of each year, as required by Section 12 of said Act.

2. Section 47 makes it the duty of the Tax Assessor to ascertain what in his judgment is a fair and reasonable market value of each item of property returned by the taxpayer.

3. By Section 31, the taxpayer is required to make return "under oath and a full and complete list of all property of which he was the owner and must separately list the land and improvements."

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 19, 1935, in which you state:

"In studying the Revenue Bill recently passed by the Legislature, I find that Section 12 and 169-A relating to partial payment of taxes conflict.

"Section 12 authorizes the payment of one-fourth (¼) of the amount of tax due but prohibits the payment of less than this amount, while Section 169-A gives the taxpayer the right to pay on one or more pieces of property assessed to him provided same is valued separately.

"Please advise whether or not the two above mentioned sections would be applicable to 1934 tax which will be collected after October 1st.?

"Where one or more pieces of property are assessed in one assessment, is it the duty of the Tax Assessor to determine the value of each piece of property? If one or more pieces of property are assessed in one assessment, would the taxpayer have the authority to pay taxes on one piece of property or would he be compelled to make a partial payment of not less than 25 per cent, of the total tax due in accordance with Section "12"?

"Section 169-A states that where property is assessed and valued separately, the taxpayer has a right to pay on one piece of property. Does this mean that the taxpayer must make a return on each piece of property?"

In reply, I beg to quote Section 12 and Section 169-A of the 1935 Act to which you refer:

"Section 12. The Tax Collectors of the several counties of the State are authorized and required to accept any moneys tendered to them in partial payment of ad valorem taxes collectible by them at any time before the sale of the properties liable therefor, provided that said payment shall be an amount not less than one-fourth of the total amount of taxes due, provided, however, that no such payment shall be made, nor shall same be accepted by the Tax Collectors, unless such payment shall amount to at least one-fourth of the total amount of taxes due on October 1st of each year hereafter. They shall credit the amount so paid first upon accrued interest and then upon the principal of the taxes owing. They shall give to the person paying the same a receipt for the amount so paid. Provided nothing herein shall be construed to postpone the payment of such taxes nor to waive any lien or right of enforcement of collection. The State Tax Commission shall prescribe the form of the receipt to be given hereunder."

"Section 169-A. Any person assessing more than one piece or parcel of real property which has been listed and valued separately on his assessment, may pay taxes on any one or more of said pieces, provided however, that he shall first pay taxes on all personal property assessed by him in said assessment."

It is my judgment that these Sections must be read in pari materia. They were passed by the same Legislature at the same time as a part of the same Act and if they can be harmonized, they should be so construed as to give a field of operation to each.

Applying this rule of construction, it is my judgment, that in no case can a taxpayer pay less than 25 per cent of the total amount of his taxes due October 1st of each year. That should his property be separately valued and separately assessed, if the taxes on a portion of it are equal to or greater than 25 per cent of his total taxes, he can pay on one or more of the separately assessed parcels of real estate, but if he chooses to follow 169-A and pay on such separate parcel, before he can do so he must pay all taxes on his personal property, and such payment must be equal to or greater than 25 per cent of the entire amount due.

While the foregoing is not perfectly clear, the provision of Section 12, that no payment shall be made or accepted unless it shall amount to at least one-fourth of the total amount of taxes due, is so highly mandatory in its terms that I can draw no other conclusion.

I think that the foregoing is applicable to taxes which are collectible October 1st, 1935.

You next make the following inquiry, "where one or more pieces of property are assessed in one assessment, is it the duty of the Tax Assessor to determine the value of each piece of property?"

Section 47 provides:

"The assessor shall from information entered on the tax return list and from all other information known to him or which he may procure, proceed to ascertain what in his judgment is a fair and reasonable market value of each item of property returned by or listed to any taxpayer."

The foregoing should answer your question. This statute has long been in our Revenue Law. What is an item, of course, depends on the circumstances. In one case, it might be an individual lot, in another it might be a 1000 acre tract. That, however, would be determined largely by the facts in a particular case.

Your next question has been answered fully, I believe above.

Your last question is answered by Section 31, which provides in short that the Taxpayer shall make return "under oath a full and complete list of all property of which he was the owner" etc. and this Section further provides "the land and improvements thereon must be separately listed." Section 39 provides in detail how real estate may be listed. I do not know exactly what you mean by "each piece of property". As provided by the statute, the taxpayer must give a full list of his property and the tax assessor must value each item. Presumably you intend for the word "piece" to have the same general application that the word "item" has, to-wit, a clearly divisible unit. If so, the taxpayer should have furnished this information on his original return.

Yours very truly,
A. A. CARMICHAEL,
Attorney General

October 3, 1935.

Hon. G. H. Howard,
Judge of Probate,
Elmore County,
Wetumpka, Alabama.

Deputy sheriff appointed under Local Act approved May 20, 1935, Elmore County, is a de facto officer even though he has failed to take the oath of office prescribed and make the bond and as such de facto officer is entitled to pay for his services rendered under said Act.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of July 23, 1935, in which you request my opinion as follows:

"Under a Local Act of the Legislature approved by the Governor on the 20th day of May, 1935, the Sheriff of Elmore County is authorized

to employ an additional deputy to be stationed at Tallassee, the salary of such deputy to be paid out of the General Fund of the County.

"This deputy was employed and began serving on the first day of June, 1935, but to date he has not filed his oath of office or bond as required by the Act. The Act states that before entering upon the duties of his office he shall file with the Judge of Probate his oath of office and his bond.

"A claim has been filed with the Commissioners Court for the salary of this deputy for the month of June. Please advise us if we can legally pay this claim."

It is my opinion it would be proper for your County to pay this deputy his salary. We are unable to find where either of our courts of last resort have passed on this precise question. I do find, however, where other jurisdictions have had this question before them, and they seem to be about equally divided in their holdings, but I think there is no doubt but that he is a de facto officer and has been performing the duties of such office, and notwithstanding the fact that he has been negligent in the taking of the oath of office and executing the bond required by Section 3 of the Local Act of the Legislature creating this office, yet as he has assumed the duties and performed the services required of him, he becomes a de facto officer and in line with the former holdings of this office. I am of the opinion such de facto officer is entitled to his pay—Biennial Report of the Attorney General 1930-1932, pp. 114-959. Opinion of the Attorney General June 18, 1935, to Judge of Probate of Elmore County.

I call attention to the case of Waldrop, Clerk vs. Courson, Constable, 208 Ala. 189.

While this case is not on all-fours with the case we have here under consideration, yet its tendancy goes a long way toward indicating what we might expect if the matter was before our Supreme Court.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 4, 1935.

Hon. F. O. McManus,
Secretary of State Highway Commission,
State Capitol.

Fines for operating motor vehicles without license upon the highways of the State is a violation of the Revenue Law and under Section 339, Revenue Code of Alabama goes 1/3 to the county and 2/3 to the State.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of July 30, 1935, in which you enclose a letter from J. M. Franklin, Ex-Officio of Justice of the Peace of Baldwin County, in which he says that he has convicted some parties in his county for operating motor vehicles without a license and is making returns to you as Secretary of the Highway Commission. You desire to know whether or not these fines go to the Highway Department under the Highway Code or whether

or not they are violations of the General Revenue Law and are disposed of 1/3 to the County and 2/3 to the State.

First, I note from the correspondence in your file this inquiry has to do with cases for operating motor vehicles without a license. The operating of a motor car or other motor vehicle without a license is a violation of the Revenue Law of the State and would not be a violation of any of the highway provisions and the fine when collected would under Section 339, Revenue Law of Alabama, 1929, go 1/3 to the county and 2/3 to the State. **Biennial Report of the Attorney General 1932-34, page 58.**

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 4, 1935.

Hon. J. Lee Smith,
Judge of Probate,
Chilton County,
Clanton, Alabama.

Under an Act of the Legislature approved June 18, 1931, General Acts 1931, page 325, before a county can pay for notice of the intention to introduce in the Legislature a local law, such law must be of interest to the County and the people as a whole, and not merely a private or individual bill.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of August 16, 1935, in which you request my opinion as follows:

"There was advertised in the Union Banner of Clanton, Alabama, an excerpt of two proposed local bills for Chilton County and these local bills were introduced, passed and became laws in the present session of the Legislature. A newspaper clipping of said two local bills are herewith enclosed and the Union Banner has filed a claim with the Court of County Commissioners for the payment of publisher's fees for these two advertisements.

"Will you please advise me whether or not by virtue of Acts of Legislature, 1931, page 325 and under the opinion of the Attorney General, 1932-34, page 207, it will be legal for the Court of County Commissioners to pay the Union Banner for advertising said two local bills? For identification I have marked clippings 1 and 2.

"Also the Union Banner has published two other notices of intention to introduce local bills and I might state further that these bills have not yet been made a law, but presuming that the said bills are passed by the Legislature and become a law, will you please advise me whether or not it will be legal for the Commissioners Court to pay the Union Banner for fees for publishing said two notices, and for identification purposes, I have marked said bills 3 and 4 and all of said clippings are herewith enclosed for your files."

Answering your request, I call your attention to an Act of the Legislature approved June 19, 1931, page 325. This Act which was intended to take

care of matters we have here under consideration was loosely drawn. From the reading of the same, it has the appearance of being intended to take care of all local legislation of whatever nature, let it be of general nature to the county, or for private purpose, just so it was of local nature.

We cannot believe this was the legislative intent, but we are of the opinion it was intended to take care of only matters of which the county is interested and was not intended for the county to pay the publishing of private bills or bills of a private nature.

I note what you say about enclosing a copy of the notices published. I am not familiar enough with the circumstances connected with these bills to know whether or not the county has such moral or legal obligation to these parties so as to become responsible for these publications. This is a matter that must be decided by the Commissioners Court, however, this much is evident. Under the Act referred to above you cannot pay any of these bills until they become a law. You will note the last clause of Section 1, which is as follows: "Provided that such bills are introduced, passed, and become a law." **Biennial Report of Attorney General, 1932-34, page 207.**

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 4, 1935.

Hon. Chas W. Lee,
State Comptroller,
State Capitol.

Veterans—Veterans qualified for exemptions under acts of 1931, page 397 may apply exemptions to licenses for operation of filling stations and barber shops, such licenses being upon the operation of the business.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of August 15, 1935, requesting my opinion as follows:

"In an opinion the Attorney General has ruled that in no case was a Veteran of foreign wars entitled to more than one license under the exemption law.

"Would one license issued covering two gasoline pumps be considered as one license, when one pump takes a separate and distinct rate? Would the same thing apply to Barber chairs? In such a case as the above should each license used be reduced to a unit basis?"

Your question involves the construction of the Acts of 1931, page 397. This statute has been formerly construed by this office. I refer you to an opinion of the Attorney General rendered to Hon. A. L. Hasty, Judge of Probate, Linden, Marengo County, Alabama, on December 8, 1932. This opinion is the controlling construction of this Act, and is followed by this office at present. (Book 12, page 244 Office Edition). I am enclosing a copy of this opinion for your convenience.

You asked if one license issued, governing two gasoline pumps would be considered as one unit, when each pump has separate and distinct rate. Schedule 15 of the Revenue Code of 1929, page 226, provides as follows:

"Automobile filling stations.—Each person operating a gasoline filling station or other motor power oil, in any municipality or police jurisdiction thereof, shall pay to the State a license fee of five dollars for each station where only one pump or filler is operated or used for the purpose of retailing gasoline or similar motor power oils, where more than one pump or filler is used, twenty dollars for each additional pump or filler used."

Schedule 79 of the Revenue Code of 1929, page 263 provides as follows:

"Gasoline filling stations—Each person, firm or corporation operating for profit a gasoline filling station or pump in cities or towns, or within five miles thereof, shall pay the following privilege tax: In cities of one hundred thousand inhabitants and over, where only one pump or filler is used, Fifty Dollars ($50.00), and for each additional pump Fifty Dollars ($50.00); in cities of Forty Thousand inhabitants and less than One Hundred Thousand, where only one pump or filler is used, Forty Dollars ($40.00), and for each additional pump Forty Dollars ($40.00); in cities of Twelve Thousand inhabitants and less than Forty Thousand, Thirty Dollars ($30.00) where only one pump filler is used and for each additional pump or filler, Thirty Dollars ($30.00); in cities or towns of Five Thousand inhabitants and less than Twelve Thousand, Twenty-five Dollars ($25.00) where only one pump or filler is used, and for each additional pump, Twenty-five Dollars ($25.00); in incorporated towns of One Thousand inhabitants and less than Five Thousand, where only one pump or filler is used, Twenty Dollars ($20.00) and for each additional pump or filler, Twenty Dollars ($20.00); in incorporated towns of less than One Thousand inhabitants Ten Dollars ($10.00) and for each additional pump or filler Ten Dollars ($10.00); and in all other places Five Dollars ($5.00) for each pump or filler."

In each of the above Schedules the **tax is placed upon "each person" or upon "each person, firm or corporation."** Therefore, it will still be observed that in both Schedules here quoted the license tax is placed upon the operation of the business and is increased by the extent of such operation as measured by the number of pumps or fillers.

The qualifications for the purposes of the tax exemption, are placed upon the type of the business as well as whether or not the business is operated through the personal effort of the veteran and is a means of livelihood. In my judgment, the veteran must meet these and all other qualifications of the 1931 Act, supra, before any exemption may be claimed.

"Only one license," referred to in the opinion of the Attorney General of December 8, 1932, supra, I interpret to mean only one classification or business. The veteran could not of course, engage in more than one type of business and claim exemption for all to the extent of twenty-five dollars, even though operated at the same location.

You asked if the same rule applicable to the filling station applies to barber chairs?

The Revenue Law of 1929, Schedule 17, page 228 provides as follows:

"Barber Shops.—Each person engaged in the business of operating a barber shop shall pay a license fee of two and one-half dollars for each chair."

The license here, is upon the operation of the business. The amount of license is based upon the number of chairs used. In my judgment, the same rules applicable to the filling stations may be applied to barber shops, but the veteran in both cases must meet the qualifications of the 1931 Act, supra, before he is entitled to exemptions.

In answer to your last question, I wish to advise that in my judgment the licenses must be for the operation of the single type of business, operated through the personal effort of the veteran with the assistance of not more than one helper, assistant, or apprentice. When all of the qualifications of the 1931 Act are met, in the instant case, it is my opinion, that licenses should be reduced to a unit basis in so far as they apply to a single type of business.

I wish to refer you to Biennial Report, 1930-32, page 827, an opinion rendered to Hon. E. Hurst, Judge of Probate, Gadsden, Alabama, and to Biennial Report 1930-32, page 210. The opinions referred to above are hereby modified to conform to the ruling of the present opinion.

Very truly yours,
A. A. CARMICHAEL,
Attorney General

October 4, 1935.

Hon. H. H. Houk,
Chief Engineer,
State Highway Department,
Montgomery, Alabama.

Court of County Commissioners authorized to rent trucks and supply same with gasoline and lubricants as part of one-third contribution on Federal aid project in their county, such use being exclusively for the construction, maintenance or repair of roads, highways or bridges in their respective counties.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"Re: May a County purchase and supply gasoline and lubricants for equipment rented from private individuals or concerns for use on Three Way Projects, one-third of which rental is being paid by the County.

"The Three Way Project is an arrangement whereby the Federal Government, the State and the County each contribute a third of the money necessary for the construction or reconstruction of any State road within the County contributing the one-third.

"The County has been renting trucks and putting the drivers of same on the Three Way Project payroll. In some instances the drivers are

the owners of the trucks while some of the drivers are off the Relief Rolls. The County wishes to supply the trucks with gasoline and lubricants as outlined above and pay for same out of their one-third payment of the cost of the project.

"Please advise whether this purchase by the County of gasoline and lubricants out of their one-third payment on the construction or reconstruction of a State Road is permissible, under the Laws of Alabama."

In reply, I advise that the Gasoline Act of 1923 as amended by the Act, approved July 15, 1931 and the Act approved July 27, 1931 levying an additional tax of one cent per gallon, provide that the same shall be spent exclusively for the maintenance, construction or repair of roads or highways or bridges in said county.

It appears to me that the expenditure in the manner detailed by you is for such purposes and is authorized.

Section 17 of an Act approved January 31, 1935, provides:

"That the proceeds from one cent of the tax herein levied shall be equally divided among the sixty-seven counties of the State of Alabama monthly as collected less the actual cost of collecting the same, payment to be made to the County Treasurer or Depository of said counties on the 10th day of each month of the year; and said funds shall be used by the several counties of the State exclusively for the construction, maintenance, supervision and policing of the public roads and bridges in the respective counties; provided, however that the Board of Revenue or other such governing body of a county may, at any time within twelve months from the passage of this Act, use at their option, subject to the approval of the Governor of the State of Alabama, any of such proceeds as collected for the purpose of matching any United States Government funds on any fair and reasonable basis that may be expended in said county."

This Act levies a tax in lieu of the so-called 1932 Tax and the tax levied by the Act approved July 27, 1931.

It will be seen that as to the tax levied by this Act the authority of the Commissioners Court is enlarged rather than limited.

It is therefore my opinion that such expenditure is authorized.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 4, 1935.

Hon. A. F. Lee,
Sheriff, Green County,
Eutaw, Alabama.

Sheriffs cannot collect guard fee as provided by Section 3741, Code of Alabama, 1923, where said section provides: "For guarding each prisoner lawfully committed to jail in the following cases: " * * * unless said fees come under the provision of this statute as set out in the body of the opinion.

Opinion By Assistant Attorney General Haynes.

Dear Sir:

I have your letter of August 15, 1935, in which you request my opinion as follows:

"Please render for me your opinion on the following matter:

"A defendant is found guilty in the justice court of P. L. and defendant appeals case to Circuit Court and is acquitted, am I as Sheriff due guard fee from the fine and forfeiture fund if I made the arrest and placed the defendant in jail?"

The rule is well settled that the statutes allowing fees and costs are strictly construed and are penal in their nature, and when the right of any officer is challenged to charge any specific fee, he must be able to point to statutory authority therefor or the right to charge such fee does not exist.
Mobile County V. Williams, 188 Ala. 639;
Northern Alabama Railway v. Lowery, 3 Ala. App. 511;
State ex rel. Holcombe, 197 Ala. 293.

I call your attention to Section 3741, Code of Alabama, 1923. This section has to do with sheriff's fees and allowances and it provides, among other things:

"For guarding each prisoner lawfully committed to jail in the following cases:

"In all felony cases whether convicted or not $2.00
In all arrests under indictment whether convicted or not $2.00
In all other cases where convictions follow arrests $2.00

You will note from the above that the sheriff's right to this fee is made contingent on the happenings of certain events none of which cover the case you are inquiring about. You say the defendant was found guilty of petit larceny in a Justice Court; he appealed and was acquitted. Under these facts your case is not covered by any one of the three paragraphs set out above. Therefore, I am of the opinion you cannot collect this fee out of the Fine and Forfeiture Fund of your County.
Biennial Report of Attorney General, 1918-1920, p. 224.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 5, 1935.

Hon. Gaston Scott, Chairman,
State Highway Commission,
Montgomery, Alabama.

Drivers' License—Act No. 331, approved September 3, 1935, construed.

1. Chauffeur license was repealed by General Revenue Law of 1935, and a driver for another would be required to take out a driver's license dependent on the type of vehicle he drove.

2. The driver of a truck for hire, a private truck, a bus for hire, or a private bus is required to pay a fifty cent driver's license. Such license would authorize him to drive his own personal car.

3. Where Mr. A owns an automobile, which neither he nor any of his family drive, his driver will be required to take out a twenty-five cent license.

4. If Mrs. B. owns a car and her daughter ownes a car, but Mr. B owns no car but drives both, he will be required to take out a twenty-five cent license.

5. Where a non-resident comes into this State and drives a motor vehicle regularly licensed in Alabama, he would be required to obtain a proper driver's license.

6. Where a non-resident is the owner of a motor vehicle, duly registered in another State not requiring licensing of operators, he may on condition that he have in his immediate possession a registration card evidencing such ownership and registration in his home state or county, operate motor vehicles on the highways of this State for the same time and to the same extent as like exemptions are granted residents of this State under the laws of the home State or Country of such non-resident. Where such a non-resident is not the owner of a motor vehicle registered in States or Countries not requiring an operator's license he may operate on the highways of this State any motor vehicle properly registered in his home State or County, without driver's license or time limit, on condition that he be prepared at any time or place to prove lawful possessiion of the motor vehicle and proper identity.

7. Where D (the head of the family) owns no motor vehicle but drives a motor vehicle furnished by someone else, he is liable for driver's license of fifty cents or tweny-five cents depending on the type of motor vehicle driven.

8. A person securing a license for which fifty cents if required is authorized to drive any type of motor vehicle.

9. A Federal employee driving his own personal automobile is required to obtain the proper driver's license.

10. The Chief of the Highway Patrol has no discretion in revoking a driver's license of any person for a period of ninety days upon receipt of certified record of the Clerk before which proceedings were had in which any person was adjudged guilty of the offenses enumerated in the first part of Section 6 of said Act.

11. The latter part of Section 6 being Section 6 subsection (b), makes it discretionary with the Chief of the Highway Patrol to suspend the operating privilege of any person who was found guilty of the two offenses enumerated in subsection (b) of said Section 6.

12. A rural mail carrier or other Government employee using his own motor vehicle on the highways of this State, is required to obtain the proper driver's license.

13. The driver of a taxicab is required to take out a fifty cent driver's license. If the owner of the taxicab does not drive them himself, he is not liable for license.

14. Where a person has paid for a twenty-five cent license and he should afterward drive a truck or other vehicle for which a fifty cent license is required, the Act does not require him to take out a further or additional license fee or fifty cents. If such person, at the time of obtaining the license contemplated operating a truck and applies for a twenty-five cent license therefor, he is subject to prosecution under Section 10 (b) of said Act.

Opinion by Assistant Attorney General Bibb

Dear Sir:

I wish to acknowledge receipt of your letter of September 16th, which is as follows:

"The Highway Commission is having a number of inquiries as to the provisions of Act No. 331 of the 1935 Legislature, (Driver's License), and I will thank you for your opinion on the following:

"1. When a driver is operating a truck for hire, is he required to buy a $5.00 Chauffeur's License as provided by the Revenue Law, or should he buy a fifty cent Driver's License?

"2. When a driver is operating a private truck, does he buy a fifty cent driver's license, whether owner or employee?

"3. Does bus driver operating a bus for hire buy a $5.00 Chauffeur's License under the Revenue Law or a fifty cent Driver's License?

"4. Does a bus driver operating a private bus buy a Chauffeur's License under the Revenue Act or a fifty cent Driver's License?

"5. Should a driver in any of the above stated cases be required to buy a Chauffeur's License under the Revenue Law, should he also be issued a Driver's License at no cost, and could he drive his own personal car on this driver's license, so secured?

"6. Where Mr. A. owns one or more automobiles and neither Mr. A. nor any member of his family drives, will Mr. A's driver be required to pay fifty cents or twenty-five cents for his license?

"7. Mr. B's wife owns a car and his daughter owns a car. Mr. B owns no car, but drives both. What does Mr. B pay for a license?

"8. Where a driver claims his residence in an adjoining state and has no driver's license law and drives a car occasionally in Alabama bearing Alabama license tag, would he be required to have an Alabama Driver's License?

"9. Where a driver entering the state from an adjoining state or any other state with tag of said state, and said state has no driver's license law, how long would the driver of said car be allowed to operate without a driver's' license?

"10. Where Mr. B owns no motor vehicle and is the head of his household and drives an automobile furnished by his firm, or a friend's automobile, what does Mr. B pay for a driver's license?

"11. Where a driver secures a truck driver's license, is it necessary for him to purchase another license to drive a private car? In other words can an operator be required to have more than one type of driver's license?

"12. Under Section 5, sub division (1), will a Federal employee be required to buy an operator's license to drive his personal car?

"13. Please construe sub-section 3 of Section 5.

"14. Does Section 6 make revocation absolute or may the Chief of State Highway Patrol use his discretion as to revocation? Must the period of revocation be ninety days?

"15. Where a rural mail carrier or other Government employee uses his own car on his route and is paid a mileage fee for the use of same by the Government, would he be required to buy Driver's license?

"16. Does the owner of a number of taxicabs operated for hire buy a chauffeur's license under Revenue Law or a fifty cent Driver's License? What would drivers of said owner operating these taxis pay, $5.00 for chauffeur's license or twenty-five cent Driver's License?

"17. Where a driver does not own a motor vehicle, he buys a Driver's License and pays twenty-five cents for same. Afterwards, he secured a job driving a truck. Could he drive the truck on his twenty-five cent license or would he be required to buy another license to drive truck and pay fifty cents for same? If so, could he surrender his twenty-five cent driver's license and secure truck driver's license by paying twenty-five cents additional?

"I have asked a number of questions that seem clear from the wording of the Act, but will thank you for your official opinion so that we may answer these questions with authority."

Answering your questions 1 to 5, inclusive, I wish to say that by opinion of this office, addressed to Hon. B. L. Malone, Probate Judge of Morgan County, under date of Sept. 5, 1935, it was held, in short, that the General Revenue Bill, approved July 30, 1935, H. B. 324, not only contains no appropriate provision requiring a license to be paid by "chauffeurs," as defined in the Act, but also had the effect of repealing the prior Act of the Legislature requiring such a chauffeur license, and therefore, effective October 1, 1935, there is no requirement for a chauffeur's license.

It therefore follows that the persons mentioned in your questions 1 to 5, inclusive, would be required to pay a driver's license, for which they would pay the sum of fifty cents. After having obtained the appropriate driver's license, for which they should be charged fifty cents, such persons would be entitled to drive private passenger automobiles without taking out further driver's license.

In answer to your question 6, Section 2 of said Act No. 331 plainly provides that where the applicant for the driver's license is not the owner of the motor vehicle in question, he shall pay a fee of twenty-five cents if the application is for license to drive a motor vehicle of the private passenger type; if the motor vehicle be a truck, bus or like type, he must pay a fee of fifty cents.

The answer to question 6 also answers your question 7.

In answer to your question 8, it is my opinion that under Section 5 of said Act No. 331, a non-resident coming into this state and driving a motor vehicle regularly licensed in Alabama would be required to obtain the proper driver's license.

Answering your question 9, Section 5 of said Act No. 331 provides, among other things, that "where such non-resident is the owner of a motor vehicle, duly registered in another State not requiring licensing of operators, he may, on condition that he have in his immediate possession a registration card evidencing such ownership and registration in his home State and Country operate motor vehicles on the highways of this State for the same time and to the same extent as like exemptions are granted residents of this State under the laws of the home State or Country of such non-resident. Where such a non-resident is not the owner of a motor vehicle registered in States or Countries not requiring an operator's license he may operate on the highways of this State any motor vehicle properly registered in his home State or Country, without driver's license or time limit, on condition that he be prepared at any time or place to prove lawful possession of the motor vehicle and proper identity."

The answer to question 7 suffices to answer your question 10 in part. The provision in Section 8 of said Act No. 331 that for each driver's license issued to the head of a family, for which fifty cents is charged, the applicant must pay the Probate Judge ten cents, does not, in my opinion, have the effect of requiring every person who happens to be the head of a family to pay fifty cents irrespective of whether he owns the vehicle involved. Section 2 provides that if the applicant is the owner of the vehicle he pays fifty cents, but if not the owner he pays either fifty cents or twenty-five cents, depending on the character of the vehicle involved.

In answer to your question 11, it is my opinion that the Act does not require a separate driver's license for each motor vehicle to be driven, but requires one driver's license, the fee being based upon the type of vehicle to be driven to some extent. It is my opinion that a person having procured a license to drive vehicles of the commercial type could drive a private passenger vehicle without procuring another license therefor.

Answering your question 12, a Federal employee driving his own personal automobile is required to pay for and obtain the appropriate driver's license.

Your question 13 is answered substantially by the answers to your questions 8 and 9. I might say further, however, that a resident of another State, which has no driver's license law, is required by Section 5 of the Act to obtain the appropriate driver's license, if he drives a motor vehicle which is not duly registered in his home State.

Answering your question 14, I wish to say that the first part of Section 6 of said Act 331, including subsection (a), is mandatory, and the chief of the State Highway Patrol has no discretion but to revoke for a period of ninety days the operating privilege of any person, upon receipt of the certified record from the Clerk of the Court before which the proceedings were had, in which the person in question was adjudged guilty of the offenses enumerated in the first part of Section 6. The latter part of Section 6, being Section 6, subsection (b), makes it discretionary with the Chief of the State Highway Patrol to suspend the operating privilege of any person, upon receiving a

certified record from the Clerk of the Court before whom the proceedings were held, in which the person in question was found quilty of the two offenses enumerated in subsection (b) of Section 6.

Answering your question 15, it is my opinion that a rural mail carrier, or other government employee, using his own motor vehicle on the highways of this State, is required to obtain the appropriate driver's license.—Biennial Report of Attorney General 1928-30, page 369.

Answering your question 16, I wish to say that the drivers of taxicabs are required by the Act to purchase driver's licenses for which they shall pay the license fee of fifty cents. If the owner of the taxicabs does not drive any of them himself he would not be required thereby to purchase any driver's license but if he does drive any of the taxicabs he should obtain the driver's license and pay the fee of fifty cents.

Answering your question 17, it is the contemplation of the Act that one who shall be engaged in operating a motor truck shall obtain a driver's license, for which he shall pay fifty cents. If, however, the person shall have obtained a driver's license for which he shall have paid twenty-five cents as for a license to operate a private motor vehicle, and thereafter has occasion to operate a motor truck or like motor vehicle, there appears to be nothing in the Act to require him for that reason to take out a further or additional license for a fee of fifty cents. However, if the person obtaining the license knew at the time of making application therefor that he contemplated engaging in the operation of a motor truck, and concealed or withheld this fact, such person might be subject to prosecution under Section 10 (b) of said Act No. 331 as for wilfully making a false statement or wilfully concealing or withholding a material fact.

I trust that this suffices to answer your questions.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 7, 1935

Hon. W. W. Hill,
Judge of Probate,
Montgomery County,
Montgomery, Alabama.

Drivers' Licenses.

1. The Owner of an automobile who does not drive is not liable for driver's license.

2. The so-called fees of fifty cents and twenty-five cents as used in the Act apply to the amounts charged for the types of licenses provided for by the Act.

3. The Probate Judge is entitled to a fee of ten cents for all licenses for which fifty cents is charged, and five cents for all licenses for which twenty-five cents is charged.

4. Any officer authorized to administer oaths may administer the oaths required of applicants. By the specific terms of the Act any clerk

in the office of the Judge of Probate shall have authority to administer oaths required on applications for driver's license.

5. The fees of ten cents and five cents to the Probate Judge are all the compensation allowed to the Probate Judge for performing all the duties prescribed by the Act, and he is not entitled to 2½ per cent of the license collected for remitting such licenses.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 21, 1935, in which you state:

"You will pardon me for taking up your time in reference to the House Bill 545, commonly known as the Automobile Drivers' License Act, No. 331.

"1. If the owner of an antomobile does not drive the automobile but has a driver, is the owner required to have a driver's license?

"2. I call your attention to the following in Section 2: 'If the owner of the vehicle, the applicant shall pay to the Probate Judge, at the time of filing his application, a fee of fifty cents. It not the owner of a motor vehicle for the operation of which the license is sought, the applicant shall pay to the Probate Judge at the time of filing his application a fee of fifty cents if the application is for a license to drive a motor truck, motor bus or like motor vehicle; or a fee of twenty-five cents if the application is for a license to drive a motor vehicle commonly designated as a private passenger vehicle.' Is the amount paid to the Probate Judge a fee to him, or is it the price of the license?

"I call your attention with the foregoing to Section 8, which bears on the same subject: 'For each driver's license issued to the head of the family, for which 50c is charged, the Probate Judge shall be allowed a fee of 10c which shall be paid by applicant, and for each license issued for which 25c is charged, the Probate Judge shall be allowed a fee of 5c which shall be paid by applicant, which said fee shall include all compensation to the Probate Judge for performing all the duties herein prescribed.' Does this mean that a fee of 10c is allowed only, on those licenses issued to the head of a family, or is your interpretation that all licenses where a fee of 50c is charged, is 10c attached thereto, which is the fee of the Probate Judge, and does it mean that all licenses issued for 25c shall have a fee of 5c attached thereto, which is the fee of the Probate Judge?

"3. It will be noted in the latter part of Section 8, the following: 'The Probate Judge or any clerk in said Probate Office shall have the authority to administer oaths required on said application and no charge shall be made for such services.' Does that mean that only the Judge of Probate or a clerk in his office has the authority to administer the oath required of the applicant. My interpretation of this is that any officer authorized to administer oaths has the right to administer an oath the same as the Judge of Probate or a clerk in his office. Am I right in this construction? The question is asked, as there are a number of firms and corporations who have their own notaries public who would not charge any fee for making the certificate, and will relieve the congestion that will be caused by the interpretation of the requirement that

only the Judge of Probate or the clerks in his office can make the certificate.

"You will note in Section 8, the following: 'The license fee collected shall be remitted to the State Treasurer on or before the fifth day of each month.' Will you kindly tell me whether or not the Judge of Probate shall deduct from the amount 2½ per cent of the fees collected?

"4. In what section of the bill does it provide for the price of the license? It speaks of it in sections 2 and 8—in Section 2 as a fee paid to the Judge of Probate upon the filing of the application asking for a license, but even Section 8, as I read it, does not clearly state that the fee referred to in Section 2 is the price of the license, although in Section 8, it does say that the license fee shall be remitted to the State Treasurer.

"Will you kindly give me a prompt reply to the foregoing questions so that I can govern myself accordingly on and after the first of October? You can see how necessary it will be, as there are probably 50,000 or 60,000 licenses of different kinds issued in this County."

Answering question No. 1, it is my opinion that this is a license on drivers and if the owner of the automobile does not actually drive himself, he is not liable for driver's license.

In answer to question No. 2, while the language of the statute refers to the amount for the license, as a fee, I think from reading the entire Act that it is very clear that the so-called fees of fifty cents and twenty-five cents refer to the amount of licenses to be paid and are separate from the Probate Judge's fee provided by Section 8. In my opinion the amounts of fifty cents and twenty-five cents are not fees to the Probate Judge, but are the prices of the two types of licenses issuable. While the Act is not carefully drawn, I am of the opinion that the words "head of a family" in Section 8, and "owner of the vehicle" as used in Section 2, are intended to have the same application both under the Act requiring the payment of fifty cents, if such owner or head of the family actually drives. It is very clear however that if the head of the family or owner actually does not drive, he is not liable for any license. Likewise, from reading the entire Act, if the automobile is actually owned by some other member of the family, such owner should pay the fifty cents license and the head of the family would be liable for the twenty-five cents license if such head also drives.

It is, therefore, my opinion that the fee of ten cents applies on all licenses for which fifty cents is a proper charge and the fee of five cents applies to all licenses for which twenty-five cents is a proper charge.

Answering question No. 4, it is my judgment that the provision that the Probate Judge or any clerk in said office shall have authority to administer oaths required on said applications and no charge shall be made for such services, does not prevent or forbid the right of any officers authorized to administer oaths, to take the affidavit required on such applications. Of course, this does not relieve the Probate Judge of his duty of passing on the qualifications of the applicant.

The question has been asked whether a clerk in the office of the Probate Judge, who is not a notary public or otherwise authorized to administer oaths, has the right to administer oaths under this Act. The statute specifically so authorizes and I, therefore, so hold.

In your next question you ask whether the Probate Judge is entitled to the 2½ per cent for remitting the licenses collected under this section. I think this is answered by the first paragraph of Section 8, which is as follows:

> "For each driver's license issued to the head of the family, for which fifty cents is charged, the Probate Judge shall be allowed a fee of ten cents which shall be paid by applicant, and for each license issued for which twenty-five cents is charged the Probate Judge shall be allowed a fee of five cents which shall be paid by applicant, which said fee **shall include all compensation to the Probate Judge for performing all the duties herein prescribed.**"

This apparently is exclusive compensation to the Probate Judge and I therefore, hold that the usual compensation of 2½ per cent for remitting license taxes does not apply to the driver's license. This is a special Act passed subsequent to the General Revenue Bill and contains this provision, and it appears to me to be the clear legislative intent that the compensation herein provided is exclusive.

I believe your last question is answered by the foregoing.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 7, 1935

Hon. Fleatwood Rice,
Judge of Probate,
Tuscaloosa County,
Tuscaloosa, Alabama.

Juries—National Guard officer disqualified from serving as Member of Jury Board under Act No. 47, House Bill No. 70, approved February 20, 1931 (Acts 1931, p. 55.).

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of September 19, 1935, in which you state that an officer in the National Guard, who receives compensation while on duty, has recently been appointed by the Governor as a Member of the Jury Board of Tuscaloosa County.

In view of the above you request my opinion as follows:

(1) Is said officer qualified to hold the office as Member of the Jury Board?

(2) If disqualified, would a jury box filled by him and other members be valid?

I am of the opinion that your first inquiry should be answered in the affirmative.

The jury boards in this State function under Act No. 47, H. B. No. 70, approved February 20, 1931 (Act 1931, p. 55). The qualifications of its members are set out in Section 2 of said Act, which provides as follows:

Section 2. That each of said Jury Boards shall be composed of three members who shall be qualified electors of the county in which they are appointed and shall be men reputed for their fairness, impartiality, integrity and good judgment. **Members of the Board shall not during the term for which they are appointed and during their tenure in said office hold any other office by appointment or election or perform any other public duty under the federal, state, county or municipal government, which carries with it any compensation whatsoever."** (Italics supplied).

It will be noted from the above that the disqualification is extremely broad. It is not confined to those holding an office by appointment or election, but extends to those who perform any duty under the federal, state, county or municipal government, which carries with it any compensation whatsoever. An officer in the National Guard clearly comes within the disqualification.

I am of the opinion that your second inquiry should be answered in the negative. It has been held that a jury venire is not subject to motion to quash because a member of the commission at the time of his appointment held another office.—**Vincenzo, et al. v. State,** 1 Ala. App. 62, 55 So. 451. See also **Spraggins v. State,** 139 Ala. 93, 35 So. 1000; **Sims v. State,** 146 Ala. 109, 41 So. 413.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 7, 1935

Hon. H. M. Fountain,
Judge of Probate, Monroe County,
Monroeville, Alabama.

Attention Hon. W. H. Wiggins, Clerk.

Under Schedule 12 of the 1935 Act an automobile dealer is liable for both State and County license in each county in which he maintains an established place of business.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 17, 1935, in which you state:

"At top of page 101 of Schedule 12 of the Revenue Code reads as follows:

" 'Provided that upon payment of the license according to the foregoing schedule, a dealer in automobiles may do a general automobile and automotive business and **not be required to pay any further** or additional state and county license, etc.'

"In towns of our size here the codes recite $50.00. The question is am I to add one half of this amount for County licenses?

"Will appreciate it if you will inform me as to this matter at your earliest date."

In reply, I beg to quote Schedule 12 of the 1935 Revenue Act, which provides in part as follows:

"Schedule 12. Upon each and every agent of and/or dealer in, and upon every person soliciting orders for the sale or purchase of automobiles, motor cars or other self propelled vehicles, except motorcycles, and except any person regularly employed by a said agent of, and/or dealer in, which said agent of, or dealer in, has paid the privilege tax or license herein provided for, the following privilege or license tax shall be levied and collected, for each place of business, to-wit: In cities or towns having a population under Twenty-five hundred people or less, Fifty Dollars ($50.00). In cities or towns having a population over Twenty-Five hundred and less than Five Thousand, Seventy-Five Dollars, ($75.00); in cities or towns having a population of over Five Thousand and less than Ten Thousand, One Hundred Dollars ($100.00); in cities or towns having a population of over Ten thousand and less than twenty-five thousand, One hundred and twenty-five Dollars ($125.00); in cities or towns having a population of over twenty-five thousand and less than fifty thousand, One hundred and fifty Dollars ($150.00); in cities or towns having a population of over fifty thousand, Two Hundred Dollars ($200.00). Provided that upon payment of the license according to the foregoing schedule, a dealer in automobiles may do a general automobile and automotive business and not be required to pay any further or additional state and county license to handle or sell automobile accessories and parts, radios, tires and batteries, or for the operation of a garage for storage where a charge is made, or for the repair or painting of motor vehicles or trucks."

By subsection (b) of Section 350, it is provided:

"There is also hereby levied for the use of each county in the State a license or privilege tax upon each person, firm or corporation engaged in or who shall carry on any of the occupations, businesses, professions or callings or shall exercise any privilege or do any act for which a license is charged by the State of 50 per cent of the State licenses or privilege tax except as herein otherwise provided."

The question, which I assume you raise, is whether that portion of Schedule 12 appearing on page 240 (providing certain exemptions) is intended to exempt the automobile dealer from the payment of county license as such automobile dealer. In my opinion, it does not. It is my judgment that the provision "and not be required to pay any further or additional State and County licenses to handle or sell automobile accessories or parts, radios, tires and batteries, etc." is meant to apply to those specific things named. As I read the Section, by paying the proper State and County licenses as an automobile dealer, such dealer is exempted from the payment of both State and County licenses levied on dealers in the various other commodities named.

I am led to this by the specific manner in which the Legislature in various sections, specifically declared that no county license is required. By Schedule 2, it is stated: "But no license shall be paid to the county." The same provision appears in Schedule 5, in Schedule 9, in Schedule 10, in Schedule 48, in Schedule 58, in Schedule 100 and in Schedule 106. The emphasis with which the Legislature in these various sections specifically stated that no license should be paid to the county, indicates to my mind that the absence of such provision in Schedule 12 indicated an opposite intent.

Schedule 18 levies a license on automobile dealers. It then authorizes such automobile dealer to do certain other things without the payment of an additional license either State or County. The fact that the words "State license" is inserted in the latter proviso indicates that the licenses from the operation of which the dealer was excepted are those specifically set out.

It is a rule of construction so well known as to hardly call for citation, that exemptions or exceptions are to be strictly construed and that none can be given except where there is a clear legislative intent. **State v. Elba Bank & Trust Co.**, 91 So. 991. Applying this rule, it is my judgment that the automobile dealer is liable for both State and County license on each established place of business according to the scale set out in Schedule 12.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 7, 1935

Hon. D. Hardy Riddle,
Superintendent, Alabama Institute for the Deaf and Blind,
Talladega, Alabama.

Alabama Institute for the Deaf and Blind Board of Trustees not authorized to construct building on campus, either from the Institution's resources solely or in conjunction with Federal Agencies, out of funds appropriated by Acts 1932, page 321, Section 32½.

If building is constructed by any Federal Agency on campus of Institution, Board of Trustees may authorize reasonable expenditures for the adaption of the same to the uses of the school.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion dated August 21, 1935, as follows:

"(1) Under the existing law, can the Alabama Institute for Deaf and Blind, enter into a contract with the Federal Government, or the PWA, by which the Alabama Institute for Deaf and Blind agrees to contribute fifty per cent or more toward the construction of a hospital on the campus of said institute, the consideration of the PWA giving a forty-five per cent grant to said Alabama Institute for Deaf and Blind.

"(2) Can the Alabama Institute for Deaf and Blind enter into a contract with the WPA whereby the WPA will furnish labor and material for the construction of a hospital on the campus of the Alabama Institute for the Deaf and Blind, costing $50,000.00 or more, and the Alabama Institute for Deaf and Blind agree to furnish hospital supplies and material including heating, wiring, plumbing, elevator and labor and materials on hand, such materials, equipment materials and labor being essential to the operation and maintenance of the Alabama Institute for Deaf and Blind."

Your first inquiry must be answered in the negative. Section 32½ of Acts 1932, page 321 (which supersedes Section 585 of the School Code of 1927) provides:

"Section 32½. THE ALABAMA SCHOOL FOR DEAF AND BLIND. There is hereby appropriated out of the general fund of the State of Alabama for the maintenance, support, insurance and upkeep of the Alabama Institute for the Deaf and Blind, an educational institution on which is a division of the Public Schools of Alabama, the sum of two hundred ninety-six dollars ($296.00) per pupil. Such appropriation to be based on the number of pupils enrolled on the first day of January of each year, and to be drawn quarterly in advance by the Treasurer of the Board of the Alabama Institute for Deaf and Blind and to be disbursed as directed by said Board. Any balance from this appropriation at the end of each year shall remain in the hands of the Treasurer of said institution and shall not revert to the State."

I understand that the only funds which the Institution now has on hand are the unexpended balances of said appropriation. In my opinion the phrase "for the maintenance, support, insurance and upkeep of the Alabama Institute for the Deaf and Blind" as used in the above cited Act, does not contemplate that any part of the appropriation should be used for the purpose of constructing new buildings, either by the Institution or in connection with any Federal Agency.

Your second inquiry is answered in the affirmative.

If the building is constructed by the Federal Agency on the campus of the Institution, such reasonable expenditures may be made as are necessary to adapting the same to the uses of the school. Such expenditures, in my opinion, come within the contemplation of the Act under the general classification "maintenance, support and upkeep of the Alabama Institute for the Deaf and Blind". Within these limits the Act, supra, authorizes the funds "to be disbursed as directed by the Board."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 8, 1935

Hon. Henry S. Long, President,
State Tax Commission,
Capitol.

1. A vacant lot or building used as an adjunct to the central place of business conducted by an automobile dealer principally for the storage of cars when the books and all business matters connected therewith are at the central place of business, is not, in the absence of special facts showing otherwise, a separate place of business and liable for separate license.

2. The State Tax Commission is authorized to issue demonstration tags only to "licensed dealers."

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 27, in which you state:

"Schedule 12, House Bill 324, Revenue Act 1935 provides for a license "upon each and every agent of and/or dealer in, and upon every per-

son soliciting orders for the sale or purchase of motor cars, etc. for **each place of business.**

"(1) A number of dealers in automobile, etc. operate what are known as used car lots. These lots are located in various parts of the city and are used for the storage of used cars for display to prospective customers. Sales of these used cars may be negotiated at the "used car lot" but completed at a central place of business. It is claimed no business other than the display of the cars, and negotiation of sale is transacted at the "used car lot", all bookkeeping and other business incident thereto being carried on at a central location. Please advise if, under the facts herein set out, such "used car lot" would be a separate place of business that would require a license under schedule 12, House Bill 324.

"(2) An automobile dealer may, instead of using an open lot for the display of used cars, rent another building and there store used cars under the same conditions as set out in (1) supra. Would such a building be regarded as a separate place of business?

"(3) Under subsection (B) Section 350, General provisions of the Revenue Bill, "there is also hereby levied for the use of each county in the state a license or privilege tax upon each person, firm, etc., of fifty per cent of the state license or privilege tax, except as **herein provided."** Under schedule 12, House Bill 324, it is provided that, "upon payment of the license according to the foregoing schedule, a dealer in automobiles may do a general automobile and automotive business and not be required to pay any additional state and county license to handle or sell automobiles, accessories and parts, radios, tires and batteries, or for the operation of a garage for storage where a charge is made, or for the repair or painting of motor vehicles or trucks." Please advise us automobile dealers who have paid the license according to schedule 12, House Bill 324, are required to pay an additional license in each county in which they do business, or whether the provision quoted above exempts such dealers from the payment of the county license.

"(4) In the event automobile dealers are liable for a separate license in each county and this matter is appealed by automobile dealers for a decision by the court, would the State Tax Commission have authority to issue "demonstration tags" to such dealers for the use of their salesmen in the several counties pending decision by the courts of the question of liability of the dealers for the county license.

"We shall appreciate it if you will give this matter your early attention and let us have your opinion as soon as possible."

In reply, I beg to advise that the answer to question 1 will depend, to a large degree upon the exact facts applying in each individual case. If the storage of the cars in a lot separate from the central place of business is merely for purposes of storage and display, and the business transactions with reference thereto, such as the keeping of the books, the actual selling, the general records and all matters directly concerning the business other than the mere storage or display of the cars are conductd at the central place of business, I am of the opinion that the "used car lot" would not be a separate place of business and not due a separate license. As stated, however, the particular mode of business in a particular case would have to decide, the matter being purely a question of facts.

The same answer, in my judgment, would apply to your question 2. The inquiry in both places is, whether or not there is an actual separate place of business, and this is to be determined upon all of the facts.

In answer to question 3, I beg to enclose copy of opinion to Judge M. M. Fountain, Monroe County.

Answering question 4, I advise that Schedule 12, to which you refer, provides in part, "provided further that the automobile dealer who has a license under this Schedule shall be permitted to purchase one demonstration tag for each salesman he so employs".

It is apparent that before a dealer is entitled to the demonstration tags he must be a licensed dealer and it is therefore my opinion that there is no authority for the State Tax Commission to issue demonstration tags unless a dealer actually secures a proper license.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 8, 1935

Hon. W. C. Batson,
Judge of Probate,
Chambers County,
LaFayette, Ala.

Deed Tax on partition deeds between tenant in common, held to be payable on the interest acquired from the grantor tenants in common.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter stating:

"A number of deeds have been filed in my office in a family partition of lands. I am not certain as to the tax required, and I am enclosing herewith a letter which is self explanatory written me by Denson & Denson.

"Will you please let me have your opinion as early as possible as to the deed tax required to be placed on each deed."

and your attached letter of Denson & Denson, the pertinent parts of which I quote:

"The deeds in the blue covers, which are the deeds numbered 1 in each of the different paragraphs of the accompanying sheets, do require some stamps and deed taxes.

"These deeds grow out of a partition among the heirs of Mr. J. T. Zachry. So far as Federal Stamps are concerned there is a regulation which provides that partition deeds require no stamps unless one or more of the parties to the partition receives a share of greater value than his undivided interest, in which event a stamp tax attaches to the deed which conveys such increase interest.

"This has been an equal division, except that Mrs. Eppie H. Zachry not only entirely released her interests in lands to her children and grandchildren, but also included some lands which she owned. This means that each party does get a deed conveying a share greater than his undivided interest; that is, each one gets a part of the share of Mrs. Zachry in the lands of J. T. Zachry, and also gets a portion of the lands which were owned by Mrs. Zachry in her own right. Therefore, each one of these deeds carries with it some value in excess of the value of the original undivided interest of the grantee in the deed. We have figured the excess value in each of the deeds with the blue covers, and have affixed stamps to these deeds in the following amounts:

Deed to Griggs Zachry, $2.50.
Deed to Mary Zachry Scott $1.00
Deed to Daisy Zachry Banks and Mary Zachry Scott, $1.50.
Deed to Kathryn Brown Zachry et als, $2.50.
Deed to Geo. H. & Griggs Zachry, $1.00.
Deed to Geo. H. Zachry, $2.50.
Deed to Daisy Zachry Banks, $2.00.

"We are convinced that these are the proper stamps to be affixed to these deeds.

"These stamps indicate that there is in the respective deeds a value in excess of the undivided interest of the grantees in the deeds as follows:

Deed to Griggs Zachry not exceeding $2500.00.
Deed to Mrs. Scott not exceeding $1000.00.
Deed to Mrs. Banks and Mrs. Scott not exceeding $1500.00.
Deed to Mrs. Kathryn Brown Zachry not exceeding $2500.00
Deed to George H. and Griggs Zachry not exceeding $1,000.00.
Deed to Geo. H. Zachry not exceeding $2500.00.
Deed to Mrs. Banks not exceeding $2000.00.

"As to the deed tax we cannot be so certain.

"The statute relating to the deed tax, which is now found on page 253 of the 1935 Revenue Act (pamphlet) puts the tax upon every deed which conveys any interest in real estate, and bases the tax upon the value of the propery conveyed; the Act provides that 'where several deeds or instruments are executed by tenants in common for the same consideration, only one of such instruments shall be taxable under this schedule.' This same provision was included in the Revenue Act as it appeared in the Acts of 1927. I do not find that our courts have passed upon this provision, nor upon the question of the applicability of the tax to partition deeds. On April 4, 1929, the Attorney General rendered an opinion Ops. Atty. Gen. 1928-1930, p. 269, which related to this tax as applicable to partition deeds, but the opinion is not very clear to me.

"Here we have a number of deeds made by tenants in common for the purpose of effecting voluntarily a partition of lands owned by them in common, each deed recites the facts and recites that it is in consideration of other deeds executed by the respective grantees. No consideration is named in either of the deeds except the execution of these other deeds for the purpose of partition, and I am unable to say, for myself whether such deeds made for the purpose of a voluntary partition, are taxable.

"I do think that if the tax does not apply to partition deeds, then nevertheless there would be a tax applicable to each deed on the same basis as federal stamps are required, and I have indicated that above.

"If the tax does apply, and is to be measured by the full value of the property described in the deeds, then the tax should be based on the following amounts, which are those full values, to-wit:

Deed to Griggs Zachry, $10,750.00.
Deed to Mary Zachry Scott, $4500.00.
Deed to Mrs. Banks and Mrs. Scott $6000.00.
Deed to Kathryn Brown Zachry et als $12,500.00.
Deed to Geo. H. and Griggs Zachery, $3500.00.
Deed to Geo. H. Zachry, $9,950.00.
Deed to Mrs. Daisy Zachry Banks, $9500.00.

"The unequal values in these deeds results from the fact that there are lands in Georgia as well as lands in Alabama, which entered into this partition; and from the further fact that in some instances some of the tenants in common not only took sole title to some land, but took joint title with another tenant in common to other lands, for instance Mrs. Banks takes sole title to lands valued at $9500.00; she takes joint title with Mrs. Scott to lands valued at $6000.00. As a further instance: George H. Zachry takes sole title to lands in Alabama valued at $9950.00; he takes joint title with Griggs Zachry to lands in Alabama valued at $3500.00, and he takes sole title to lands in Georgia at $800.00. This will explain the inequality in values."

The question which you present is one of considerable difficulty, but under the facts, I do not think that the opinion cited by Mr. Denson (Biennial Report 1928-30, page 368) is controlling.

If I properly interpret that portion of Sec. 21½ of the Revenue Act of 1927 providing "That where several deeds or instruments are executed by tenants in common for the same consideration, only one of such instruments shall be taxable under this section," such provision is limited in its application to those cases where several tenants in common execute separate deeds to the same property. The deed tax being payable once upon the value of the property conveyed, it evidently was the intention of the legislature to require the grantee to pay only one deed tax on the entire value of the property conveyed. Such, however, is not the present case. Each of the tenants in common in the entire estate receive a definite portion of the estate to the exclusion of the others and such definitely assigned portions have specific values set out in Mr. Denson's letter. Moreover as pointed out by him, each of them received something in excess of the value of their undivided portion of the estate by virtue of conveyance by Mrs. Eppie H. Zachry of her undivided interest in the estate and also of certain lands which she owned individually. As Mr. Denson indicates, there is undoubtedly a tax due on such excess.

According to the statement set out there are five heirs interested in the estate, therefore, with the exception of two of the deeds where there are two joint grantees, each grantee will have conveyed to him a four-fifths interest in the property which he acquires and in the cases where there are two grantees, they will presumably receive from the other heirs a three-fifths interest in the property conveyed by such instrument.

In an opinion appearig in the Biennial Report 1928-1930 page 683, inter-alia, it was said "The amount of the filing tax depends upon the value of the interest conveyed by the instrument. What would have been its reasonable cash value at the date of its execution of the instrument, if the transaction had been entirely for a cash consideration."

It seems to me that this principle should govern the present case. After deducting the value in excess of the undivided interest, as set out on page 2 of Mr. Denson's' letter from the full value of the property, there should be taken in cases where the grantee is single, four-fifths of the remainder and where there are two grantees, there should be taken three-fifths of the remainder and these values should represent the "value of the interest conveyed by the instrument," and the deed tax should be computed on that value plus the excess as set out in Mr. Denson's letter, as required from Mrs. Eppie H. Zachry.

To illustrate, the full value of the property conveyed to Mr. Griggs Zachry is shown to be $10,750.00. The excess is shown to be $2,500.00. Deducting this leaves a balance value of $8,250.00 as the value of the jointly owned property conveyed to him. Four-fifths or the interest of the other heir is $6,600.00 that plus the $2,500.00 excess makes a total taxable value of $9,100.00 which would require a tax of $9.50.

The same method should be applied to the other interests.
Biennial Report of Attorney General 1926-28, p. 42.

Yours very truly,
A. A. CARMICHAEL,
Attorney General

October 8, 1935

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Walker County—Authority to borrow money to pay amount due witness fund from general fund.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of September 20, 1935, which is as follows:

"Local Acts, 1932 Extra Session, page 39, Section "4", provides 'That on the first Monday in January of each year that there be paid from the General Fund of Walker County into said witness fund a sum not to exceed $5,000.00.'

"No transfer of funds from General Fund to witness fund was made on the first Monday in January of this year. Later in the year witness certificates accumulated against the witness fund amounting to approximately $600.00, and anticipated certificates are set as about the same amount. The General Fund of the county being depleted the Board of Revenue arranged a temporary loan of $12,000.00 to pay preferred claims under section "231" of the Code of 1923, and to place $1,000.00 in the Witness Fund out of the amount borrowed. The $12,000.00 will not pay the preferred claims now due and becoming due before anticipated taxes are collected.

"Under ruling of the Attorney General, Biennial Report 1932-1934, p. 311, I am of the opinion the Court was without authority to borrow money for purpose of transferring same to witness fund, and Treasury would be liable for transferring and paying out same.

"Transfers of General Fund to this witness fund have been made in other years other than at time prescribed by the act, and involves considerable expenditures in witness fees.

"Please advise as to the right to borrow money for the purpose mentioned, and also for a construction of the rights of the Board of Revenue to make transfers under this act."

I am of the opinion that Walker County had the authority to borrow money for the purpose above mentioned.

In the opinion found in Biennial Report of Attorney General 1932-1934, p. 311, to which you refer, it was stated:

"A county has the authority to borrow money, subject to the constitutional limitations under and by virtue of the provisions of Section 6776-6788, Code of Alabama, 1923, provided the provisions thereof are complied with strictly.—Biennial Report Attorney General, 1928-1932, page 251. But this authority in my opinion, does not contemplate the borrowing of money to pay a preferred claim or class of claims to the exclusion of other claims of a preferred class. The preferred claims against a county and the order of their priority are set out in Section 231, Code of Alabama 1923." (Section 231 has been amended by Act No. 110, S. B. 70 and Act No. 462, H. B. 951—of the 1935 Legislature).

However, the above limitation on the county's authority to borrow money to pay claims to the exclusion of preferred claims under Section 231 is not applicable to the instant case. Witness fees are charges of court—**Biennial Report of Attorney General,** 1928-1930, p. 428; **Birmingham Electric Company v. Harry,** 215 Ala. 458. "Charges of court" is one of the preferred classes set out in Section 231, supra.

The fact that the transfer from the general fund to the witness fund, under Local Act 1932, p. 39, applicable to Walker County, was not effectuated on the date specified therein, would not, in my opinion, later prevent such transfer. Further, it would not vitiate the authority of the County to borrow money to pay the witness fees, which are charges of court and a preferred claim under Section 231 of the Code 1923, supra.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 9, 1935.

Hon. W. L. Pratt,
Judge of Probate, Bibb County,
Centerville, Alabama.

1. Under Act 547 approved September 14, 1935 amending the so-called Contract Carries Act of 1932, motor vehicles used exclusively for the transportation of school children and school teachers to and from school or while being used for any school purpose or any public or com-

munity purpose at the direction of the Superintendent of Education while being so used are exempted from any license tax or registration fee required of a contract carrier, common carrier or jitney bus.

2. License tags for such vehicles shall be supplied upon requisition to the State Comptroller by the State Superintendent of Education based on applications made by County and City Superintendents of Education approved by the County or City Boards of Education.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of October 1st, in which you state:

"Please advise if school buses will be required to buy regular Truck tag, and if not what tag will they be required to have?"

In reply, I beg to advise that Act No. 547, House Bill 948 approved September 14, 1935, provides in part as follows:

"Section 2. There shall be excepted from the provisions of this Act: 1. Motor vehicles while being used exclusively for the transportation of school children and school teachers to and from school, or while being used for any school purpose or any public or community purpose at the direction of or by authority of the superintendent of education having supervision over the school or schools regularly served by such motor vehicles, and such motor vehicles, while being so used shall be exempt from any license tax or registration fee required of a contract carrier, a common carrier or a jitney bus. 2. Motor vehicles for hire while operating within the limits of a City or incorporated town or within the police jurisdiction thereof, or between two cities or incorporated towns whose city limits join or within the police jurisdiction thereof.

"Section 3. The State of Alabama shall provide at state expense a special license tag to be used on and to designate all motor vehicles used exclusively for the transportation of school children and school teachers to and from school or while being used for any school purpose or any public or community purpose at the direction of or by authority of the Superintendent of Education having supervision over the school or schools regularly served by such motor vehicles. These tags shall be supplied annually upon requisition to the State Comptroller by the State Superintendent of Education, this requisition to be based upon application for such license tags made by county and city superintendents of education and approved by county and city boards of education, the application made by each superintendent to give the name and address of the operator of the motor vehicle on which the license tag is to be place and to contain a certification that said motor vehicle will be used for the purposes designated in this act."

It will be noted that school buses are exempted from license tags by these provisions but that the special tag to be used must be secured upon application made by the County and City Superintendents of Education approved by the respective Boards of Education through the State Superintendent of Education.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 9, 1935.

Hon. Chas. W. Lee,
State Comptroller,
The Capitol.

1. Fine and Forfeiture Fund—penalty for failure to keep register required by Section 303 (5)

2. Fines—must be payable in money.

Opinion by Assistant Attorney General Bibb.

Dear Sir:

I have your letter of August 20th in which you request my opinion as follows:

"The following information is given with reference to the Fine and Forfeiture Fund of Blount county, and your advice with reference to the question below will be appreciated.

"Since 1922 the county Treasurer has not kept a separate fund for the Fine and Forfeiture Fund. A cash book for this Fund was kept for the period from 1917 to 1922 and this cash book shows a balance in the fund on April 20, 1922 of $715.84 which balance was transferred to the cash book of the general fund on December 6, 1924. Such fines paid in cash by the Clerk have been credited by the Treasurer to the Generel Fund of the County. No Fine and Forfeiture Fund disbursements have been made by the Treasurer.

"The Treasurer has not kept a Register for registering claims against the Fine and Forfeiture Funds. In receipting the fee books the Treasurer would, in some instances, indicate that the fine was paid with claims and in some instances the books would be receipted without this indication, although the Clerk's endorsement on the fee books would show that the defendant paid the fine with claims.

"The Treasurer has only entered on the general fund cash book the actual amount of money received from the Clerk. The remittances made by the Clerk semi-annually to the Treasurer would be accompanied by a statement from the Clerk showing the fines collected, the deduction of the Clerk's commission, and the net amount to be turned over to the Treasurer. The net amount so determined would be accounted for by cash paid to the Treasurer and Fine and Forfeiture Fund claims to balance the statement. These claims would be composed mostly of Clerk and Sheriff's claims with a few witness claims.

"Section 4038, Code of Alabama, 1923, reads:

" 'All Fines and Forfeitures shall be paid in money and shall go to the county in which the indictment was found, or the prosecution commenced, unless ohterwise expressly provided; and judgment therefor must be entered in favor of the State, for the use of the particular county.'

"Blount County appears to be operating (as far as the Fine and Forfeiture Fund is concerned) under a local Act approved February 23, 1883, (Acts of the General Assembly, Session 1882-83, pages 548-549-550),

in which it is provided that State witness tickets, solicitor's, Clerk's and sheriff's claims payable out of the Fine and Forfeiure Fund shall be receivable for any Fine and Forfeiture due the County.

" 'At the value expressed by said tickets and officers claims, and when the same shall be paid into the county Treasury, bank or other place of deposit, the County Treasurer, or any other person or persons acting as such, shall mark on his registry of said claim, that the same is paid, the date and to whom.'

"Section '8' of this Act of 1883 provides that:

" 'All the witness tickets and claims due from and payable out of the Fine and Forfeiture Fund shall be registered with the County Treasurer, or other person or persons acting as such, within twelve months from the time they become payable, or they shall be forever barred, and the same shall not be registered nor received in payment of any debt due the county."

"Another Act, similar in its purport, was approved February 28, 1889, and this Act is being quoted in full as follows:

" 'No. 544 AN ACT H. B. 4

" 'Authorizing the payment of Fines and Forfeiture with certain claims in the counties of Cherokee, Blount and Marshall.

" 'Section 1. Be it enacted by the General Assembly of Alabama, that all Fines and Forfeitures in the counties of Cherokee, Blount and Marshall (which have been had or assessed and not paid) or which may hereafter be had or assessed, may be discharged by payment in claims against the Fine and Forfeiture Fund of said counties, commonly known as State Claims.

"2. Be it further enacted, that all laws and parts of laws in conflict with this Act, be and the same are hereby repealed.

"Approved February 28, 1889.

"It is, therefore, noted that the clause in the Act of 1883 requiring the registration of claims by the Treasurer, is missing from the Act of 1889.

"From an opinion of the Attorney General (Biennial Report 1926-1928, page 59), it is seen that Covington County is accepting witness certificates in payment of fines under authority of a local act of December 11, 1886, and the question was asked if this local Act was repealed by Section 4038, Code of 1923. In this opinion it is stated:

" 'A later Act does not repeal a prior local Act unless it was plainly the intention of the Legislature so to do. It is necessary that this intention to repeal be expressed by a repealing clause or by necessary implication. It will be noted that Section 4038, Code of 1923, contains no repealing clause.'

"For the period from April 20, 1922 to December 31, 1934, it has been ascertained that over $34,000.00 of Fines and Forfeiture claims have been turned over to the County Treasurer by the Clerk in payment of fines, none of which have been registered by the County Treasurer before reaching the hands of the Clerk.

"Sub-section 16 of Section 6724, Code of Alabama 1923, relating to the commissions of Circuit Clerks, read:

" 'To render to the County Treasurer, Court of County Commissioners or Boards of Revenue, within thirty days after each term of the court, a statement in writing and under oath of the fines assessed and forfeitures obtained during such term, the amount of each, and against whom each was assessed or obtained, and also what money they have received for the county, specifying from whom, on what account, and the amount in each case, and after deducting from such amount five per cent for their compensation, they must pay the balance to whomsoever is custodian of the county funds.' "

"From the above it would appear that this section applies only to the Circuit Court but the Clerk only makes remittances to the County Treasurer twice a year for all fines and fees collected in both Circuit and County Courts. It would further appear that by the inclusion of county court fines and fees in such remittances that Section 3810 has not been complied with.

"The Section reads as follows:

" 'A county court, for the trial of Misdemeanors, shall be held on the first Monday of every month in every county, at the court house thereof, and may continue until the business is disposed of. In counties wherein Circuit courts are held in two places for the trial of criminal cases, the county court shall be held at the same places at the county site on the first Monday in each month, and at the other place on the second Monday in each month, or on such other day as the Judge may designate.' "

"Giving consideration to the above, please advise:

"1. By the failure of the County Treasurer to keep a separate fund for the Fine and Forfeiture Fund, and by his failure to keep a register for the registration of Fine and Forfeiture Fund claims, as required by Section 303, sub-section '5', Code of Alabama 1923, and the local Act above quoted, what penalty attaches for such derelication of duty?

"2. In the absence of a Fine and Forfeiture Fund and a Register for registering claims, it is impossible to determine the status of the Fine and Forfeiture Fund. Considering this, are Fine and Forfeiture Fund claims that are unregistered and have been accepted in payment of fines, legal claims?

"3. If such claims referred to in question No. 2 are illegal, would the Circuit Clerk of Blount County be liable on his official bond for the amount of such claims accepted from defendants in payment of fines?

"4. Would a Circuit Clerk, or Ex-officio Clerk of the county court, have the legal right to retain money received from defendants and substitute claims in payment of fines for such money received?

"In comparing the two Acts of 1883 and 1889 it is noted that the Act of 1889 states that fines may be paid in claims against the Fine and Forfeiture Fund of said counties 'commonly known as State claims,' and that Section '2' of this Act repeals all laws and parts of laws in conflict with this Act."

1. The Supreme Court of Alabama in Ellis vs. Batson, 177 Ala. 313, 316, 58 So. 193, has held that the duty imposed on a County treasurer by Section 303 is an imperative and non-delegable duty, and any breach of such duty is a violation of Section 5078 which is as follows:

"Any county treasurer or other custodian of county funds, who fails to discharge any duty required of him by law, is guilty of a misdemeanor."

2. In an opinion addressed to you on August 7, 1935, this office held that the Local Acts approved February 23, 1885, and February 28, 1889, relative to the Fine and Forfeiture Fund in those certain counties named in the Act has been repealed by the provisions of Chapter 134 of the Code of 1923 as amended by Acts of 1927, p. 45. Section 4038 of the Code of 1923, provides as follows:

"4038. Fines to go to county, and judgment accordingly. All fines and forfeitures shall be paid in money, and shall go to the county in which the indictment was found, or the prosecution commenced, unless otherwise expressly provided; and judgment therefor must be entered in favor of the use of the particular county."

Therefore, it is apparent, that fines cannot properly be paid in Fine and Forfeiture Fund claims, whether registered or unregistered, but such fines must be paid in **money.**

A perusal of Section 303 (5) will show that **registration** is no indicia of the **legality** of the claim, but merely a mode of designating the order in which such claims must be paid. Section 303 (8) as pertinent, is as follows:

"——and when a claim of any character is paid or received by him, he must cancel, etc. ——and if registered write upon register etc."

Unregistered claims, while legal, if authorized, must await their turn after all other claims have been paid.

3. As said supra, the claims are not illegal, but they should not be accepted in payment of fines, for such payments are, by Section 4038, required to be in money. Accordingly, on acceptance of such claims in payment of fines by the Circuit Clerk, amounts to a breach of the duties of his office, and he would be liable on his official bond under Section 2612 for the amount of such claims accepted from defendants in payment of fines.

The pertinent portion of Section 2612 is as follows:

"2612. Legal effect of official bond. Every official bond is obligatory on the principal and sureties thereon—

1. For every breach of the condition during the time the officer continues in office, or discharges any of the duties thereof."

4. This inquiry must be answered in the negative for the reasons cited in paragraph 2, supra. The Clerk cannot be allowed to do indirectly that which is by law prohibited when done directly.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 9, 1935.

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

School Funds cannot be legally expended on permanent improvements of school building not owned by proper school authorities.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of September 28, 1935, which is as follows:

"I am in receipt of a letter from Hon. W. R. Young, President of the Board of Education, Bibb County, which I quote below:

'Referring to our conversation in your office yesterday, I will thank you very much if you will secure a ruling from the Attorney General's office relative to the expenditure of school funds for the erection of buildings, additions, painting and equipment upon lands not owned by the State.

'The proposition is this: The Bibb County Board of Education contemplate borrowing $55,000.00 and securing a grant of $45,000.00 from P. W. A. to be used for building purposes. We have a request from the school authorities at Piper requesting us to build an addition of four class rooms to their present building, the same to be equipped completely and the entire building to be painted. Total cost from $10,000.00 to $12,000.00.

'The land upon which their present school building is located upon is owned by private parties and leased to the Little Cahaba Coal Company, the usual mining lease being in force, providing for termination in the event the royalties, etc., are not paid. The Little Cahaba Coal Co., proposes to sub-lease the land upon which the present building is located on, about five acres, to the Bibb County Board of Education for use as school purposes only for term of fifteen years.

'Can school funds be expended, legally, under the above conditions?'

"I wish to advise that in a former opinion you have ruled that the County Board of Education had no authority to pay out State or County Funds in improving or repairing a school building that was not owned by the State or County.

"I have taken the position that a County Board of Education has no authority to repair or improve a building which they have leased.

"Please advise whether or not the Board of Education has authority to spend county funds in making additions or improving a building which is owned by a private concern but has been leased by the County Board of Education."

I am of the opinion that the position taken by you is correct. I do not think that school funds can be legally expended for the purpose of making permanent improvements on school buildings not owned by the County Board of Education.

In taking this position I am following the uniform ruling of this office. On April 30, 1927, in an opinion addressed to the County Superintendent of Education of Lauderdale County, Ex-Attorney General McCall held:

"However, I wish to inform you that the repeated rulings of this office have been to the effect that public school funds, districts or county, cannot be used in making permanent improvements in or on a privately owned school building, even though same is devoted to public school purposes."

I also refer you to an opinion rendered to Judge Chas. E. McCall on October 15, 1925 (Biennial Report Attorney General 1924-1926, p. 261) wherein it is held to like effect.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 9, 1935.

Hon. Chas. E. McCall,
State Auditor,
Capitol.

Board of Registrars—Members not required to obtain commission under Section 2579, Code of 1923.

Bonds—Jury Commissioners and Registrars of voters not required to execute bond under Act No. 191, H. B. 344, approved April 20, 1933 (Acts 1933, p. 203).

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of October 3, 1935, which is as follows:

"Please advise whether there is any provision of law that a Registrar of Voters, as appointed under Section 370, Code of Alabama, 1923, is required to be commissioned as an officer.

"Please also refer to Acts of Legislature of 1932, pages 104 and 284 and to Section 16 of each one of those Acts, and also to the Acts of the Legislature of 1933, page 203, and advise whether or not the members of the Board of Registrars or Jury Commission are required to give bond."

I am of the opinion that your first inquiry should be answered in the negative.

Section 2579, Code of 1923, provides that certain officers, therein enumerated, must obtain a commission. A Registrar of Voters or a member of the Board of Registrars is not one of those officers specifically enumerated. In construing Section 2579, supra, the Supreme Court held that a commission is required of only those officers mentioned therein, whether such officers are elected or appointed, **Draper v. State,** 175 Ala. 547, 57 So. 772.

I am also of the opinion that your second inquiry should be answered in the negative.

Act No. 110, H. B. 1, approved October 2, 1932, (Acts 1932 p. 104) regulated, provided for and required bonds of county officials and employees, and

clerks, deputies and employees in county offices. This Act was amended by Act No. 290, H. B. 689, approved November 9, 1932 (Acts 1932, p. 284). Section 16 of both the original and amended Act provided that the official bonds of each Jury Commissioner and each Registrar of Voters shall be in the sum of $500.00.

Act No. 191, H. B. 344, approved April 20, 1933 (Acts 1933, p. 203) further regulated, provided for and required bonds of county officials and employees, and clerks, deputies and employees in county offices. In this Act there was no provision for the bond of Jury Commissioners or Registrars of Voters.

The 1933 Act, though not amendatory in form, covered the entire subject-matter of the bonds of county officials and employees, and clerks, deputies and employees in county offices. It also contains the usual repealing clause "that all laws or parts of laws in conflict with the Act be and the same hereby repealed."

An Act seeking to deal fully and completely with the entire subject of a former statute takes the place of and repeals the provision of the former. In other words, when the provisions of a statute cover the entire subject-matter of a former statute and are clearly intended as a substitute for all the provisions of the former, the former statute is repealed, regardless of the inconsistency or repugnancy of the statutes.—**Levy, Aronson & White v. Jones,** 208 Ala. 104, 93 So. 733; **State v. Kirkpatrick,** 19 Ala. App. 50, 95 So. 409, cert. den. 209 Ala. 16, 95 So. 494.

The premises considered, it is my opinion that the 1933 Act, supra, repealed the 1932 Act, supra, therefore, the Jury Commissioners and Registrars of Voters are not required to execute bond as they were omitted from the 1933 Act, supra.

However, should the Court of County Commissioners, Boards of Revenue or other like governing body determine that it is to the best interest of the county that such officials be placed under bond that such governing body is vested with the authority to require a bond and fix the amount thereof. Such authority is provided for in Section 3 of the 1933 Act, supra, which section is as follows:

> "Section 3. The Court of County Commissioners, Board of Revenue or other like governing bodies of the respective counties are hereby authorized and empowered to fix and approve the official bonds of all other county officials and employees, and clerks, deputies and employees in county offices in such an amount or amounts as may in their judgment be necessary for the safety and security of public funds or other funds and as the public interest may demand subject to such limitations as are specifically provided herein and made applicable to each particular county official."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 9, 1935

Hon. J. F. Smith,
Clerk of Circuit Court,
Escambia County,
Brewton, Alabama.

(1) Local Act No. 256, approved August 21, 1935, takes Escambia County from out operation of "Lee Financial Control Act" in so far as payment of witnesses is concerned.

(2) No county warrants issued unless money in treasury to pay same.

(3) Outstanding warrants to be refunded.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of September 24, 1935, which is as follows:

"Please give me your opinion on a recent act of the Legislature No. 379 (H. 191) better known as the Lee County Financial Control Act.

"1st. Section five of said act designates about issuing warrants against the general fund of the county stating in effect as follows: 'No warrant shall be issued or check drawn on the county treasury or county depository by any person except the Judge of Probate or Chairman of the Board of Revenue, or like governing body, or such other officer as may be designated by such board.' Section seven provides and reads in part as follows: 'It shall be the duty of the Board of Revenue, County Commissioners or like governing bodies, to provide and appropriate funds for paying warrants issued upon orders drawn by other county officials in pursuance of law, which orders are not required by law to be approved and authorized by such Board.'

"Under the above quoted sections of said Act would the county treasury or county depository have authority to pay claims of jurors and witnesses in attendance upon court upon an order issued direct to them by the Clerk of the Circuit Court as is now provided for by Section 3760 of the Code of Alabama of 1923 and a local act of the Legislature recently passed making claims of witnesses of Ecsambia County a claim against the general fund of said County?

"If your answer to the above question is negative would certificates issued by the Clerk of the Circuit Court have to be presented to the Probate Judge and then he in turn issue another warrant on the county treasury?

"2nd. Under the above mentioned Act. Section Seven further provides that no warrant or order for money shall be issued in pursuance of authority of the Board of Revenue, County Commissioners or other like governing body until funds are available for its payment upon presentation to the treasury or depository.

"Would the Board of County Commissioners if they do not meet until after October 1st, 1935 have authority to issue warrants on the county

Depository for claims that have accrued prior to October 1st, 1935 if there are no funds in the County Treasury with which to pay same?

"If your answer to the above question is negative, would it be legal for the Board of County Commissioners to meet in special session on September 30th, 1935 and issue warrants against the county for any and all indebtedness accrued to that date?

A determination of the question propounded by you necessarily requires a consideration of two Acts of the 1935 Legislature, namely, Act No. 256, House Bill 649 (Goolsby) approved August 21, 1935, and applying only to Escambia County, which Act I will hereafter refer to as the Goolsby Act, and Act No. 379 House Bill 191 (Lee of Monroe) approved September 9, 1935, which will be hereafter referred to as the Lee Act.

It must be noted at the outset that the Goolsby Act became a law prior to the Lee Act and that the Lee Act does not supersede or repeal Acts applying to single counties in which class the Goolsby bill falls.

I am of the opinion that the Goolsby Act, not being repealed by the Lee Act, authorizes the county treasurer of county depository of Conecuh County to honor the witness certificates drawn in accordance with the provisions of said Goolsby Act. That in so far as the pay of witnesses is concerned the Probate Judge or Chairman of the Board of Revenue is relieved from the duty of issuing warrants based upon the order of the Clerk of the Circuit Court as would be his duty under the provisions of the Lee Act. Section 4 of the Goolsby Act is as follows:

"That it is hereby made the duty of the County Depository or the County Treasurer, if there should be such officer, to pay each witness certificate whether issued by the clerk of the Circuit Court, the Clerk of the County Court, or the foreman of the grand jury, on its presentation by the owner thereof, and to take up and cancel each one as it is paid, and also to mark same paid."

However, such is not the case with jurors. The method by which jurors are to be paid not being dealt with in the Goolsby Act, is governed by the provisions of the Lee Act, the pertinent parts of which are as follows:

"Section 5. WHO SHALL ISSUE WARRANTS. No warrant shall be issued or check drawn on the County Treasury or County Depository by any person except the Judge of Probate or Chairman of the Board of Revenue, or like governing body, or such other officer as may be designated by such Board; **and officers who are authorized to pay claims which have not been first approved by the Board, shall issue orders for warrants or checks which must be presented to the officer so authorized to issue warrants payable out of the County Treasury or County Depository.**"

The Lee Act does not attempt to have all claims approved by the governing body of the county before such claim is ready for payment but does require that where provision is made for certain claims to be paid without the approval of the governing body that the order drawn by the officer charged by law with the duty of drawing such order, which order would have heretofore been presentable to the county treasurer for payment, must be presented to the Probate Judge or Chairman of the Board of Revenue or to some other duly designated official, said order being the authority for the last named official to issue a warrant on the county treasury.

In answer to your second inquiry, I refer you to Section 7 of the Lee Act which section specifically provides that "no warrant or order for money shall be issued in pursuance of authority of Board of Revenue, County Commissioners or other like governing body until funds are available for its payment upon presentation to the treasurer or depository."

In answer to your third inquiry, I am of the opinion that warrants ordered issued and issued prior to October 1st, 1935, the effective date of the Lee Act, to take care of the outstanding open claims against the county would be legal but would have to be refunded under the provisions of Sections 9 and 10 of said Lee Act.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 10, 1935.

Hon. H. W. Clayton,
Clerk of the Circuit Court,
Marshall County,
Guntersville, Alabama.

Counties—Under Act No. 379, House Bill 191, approved September 9, 1935, only the Judge of Probate, Chairman of the Board of Revenue or other governing body, or such officer as may be designated by such board, may issue warrants payable out of County Treasury or County Depository.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your telegram of September 18, 1935, in which you request my opinion as follows:

> Under the so-called County Budget Act (Act No. 379, House Bill No. 191), approved September 9, 1935) will it be your duty, as Clerk of the Circuit Court, to issue warrants on the County Depository for pay for services of jurors and bailiffs as heretofore or must you issue an order to the Chairman of the Board of Revenue to issue warrants in question?

The answer to your inquiry is governed by Section 5 of Act No. 379, House Bill No. 191, approved September 9, 1935, which provides as follows:

> Section 5.—WHO SHALL ISSUE WARRANTS? No warrant shall be issued or check drawn on the County Treasury or County Depository by any person except the Judge of Probate or Chairman of the Board of Revenue, or like governing body, or such other officer as may be designated by such Board; and officers who are authorized to pay claims which have not been first approved by the Board shall issue orders for warrants or checks which must be presented to the officer so authorized to issue warrants payable out of the County Treasury or County Depository."

It will be noted from the above that warrants can be drawn by only the Probate Judge or Chairman of the Board of Revenue, or other like governing body, or such officer as may be designated by such Board. In cases where

the claims do not have to be approved by the Board, the officer who was heretofore authorized to issue warrants must now issue orders for warrants which must be presented to the officer authorized to issue warrants payable out of the County Treasury or County Depository.

Specifically answering your inquiry, I am of the opinion that you must issue orders for the warrants in question, which must be presented to the officer authorized to issue the warrants and who in turn issues warrants.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 10, 1935

Hon. Rush Davidson, Member,
Purchasing Committee, Tallapoosa County,
East Tallassee, Alabama.

Statutes—Construction and constitutionality of Act No. 214, House Bill No. 642, approved July 30, 1935, creating a purchasing committee for Tallapoosa County.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of September 23, 1935, in which you present the folllowing questions relative to Act No. 214 House Bill No. 642, approved July 30, 1935, which provides for the regulation and purchasing of supplies for Tallapoosa County:

"1st. Can the Committee be legally called together for its first meeting without the approval and sanction of the Chairman as named in said Act. If so, how?

"2nd. Can we legally buy materials to be used by the County Commissioners? Can we legally buy bridge materials to be used by the County Commissioners when this duty on our part is not set in the caption of the Act?

"3rd. Does Section No. 8 of said Act make it penal?

"4th. When does said Act go into force?

"5th. If this Act is penal could we be legally named as members of this Committee before the expiration of sixty days after its approval by the Governor?

"6th. Is each and every section of this Act constitutional?

I am of the opinion that your first inquiry should be answered in the affirmative. Section 5 of the Act in question provides for the meetings of the purchasing committee. There is no provision for the first meeting. The proper procedure would be for the chairman to call said first meeting. However, if he fails to do so, the other two members may call said meeting.—**Commissioners Court of Baker County,** 23 Fla. 419, 2 So. 776.

In my opinion both parts of your second inquiry should be answered in the affirmative. The title to the Act is broad and covers all purchases for

which the county would be legally liable. The body of the Act authorizes the purchases referred to in the title. Bridge materials, in my judgment, comes within the category of materials for road work, which is specifically set out in the title. In other words, material for road work, as used in the title, is sufficienty broad to include bridge materials as used in the body.

For convenience your third, fourth and fifth inquiries will be grouped together.

The Act in question is purely remedial with the exception of Section 8, which provides "that any member of said purchasing committee violating any of the provisions of this Act shall be guilty of a misdemeanor." Section 8 is penal. The Act, therefore, is both penal and remedial. The rule in respect to Acts of this dual nature is set out in 59 Corpus Juris, 1121, Section 662, which is as follows:

> "662. Statutes Both Penal and Remedial. Where a statute is both penal and remedial, as where it is penal in one part and remedial in another part, it should be considered as a penal statute when it is sought to enforce the penalty, and as a remedial statute when it is sought to enforce the remedy."

Applying to above rule to the Act in question as to its effective date (the Act being silent as to its effective date) it follows that the remedial part takes effect upon its approval by the Governor.—**Montgomery Traction Company v. Knabe,** 158 Ala. 458, 48 So. 501; **State v. Stearns,** 200 Ala. 405, 76 So. 321. However, the penal provision cannot be enforced until sixty days after its approval.—**Section 5531, Code of 1923.**

The above answers your third and fourth inquiries. From the above it follows that your fifth inquiry should be answered in the affirmative since the appointment of the members of the purchasing committee under Section 1 of the Act in question comes under the remedial part of said Act. It is specifically provided that the appointment be made upon the approval of the Act.

In answer to your sixth inquiry, I wish to state that I find no constitutional objection to said Act or any part thereof.

The Act, in my opinion, does not violate Section 43 of the Constitution of 1901. The title to the Act is broad and covers all purchases for which the county would be legally liable. There is nothing in the body that is not within the subject-matter of the title. Moreover, the Act contains but one subject, viz: The regulation and purchasing of supplies for Tallapoosa County.—See State Docks Commission v. State ex rel. Jones, 227 Ala. 521, 150 So. 537, and cases cited.

The Act, in my opinion, does not violate Section 105 of the Constitution, as being a local law on a subject covered by general laws. This section does not withdraw the legislative discretion to prescribe and change governing agencies of counties by local legislation suited to the varied needs of the different counties. The consolidation or creation of new agencies to do the work of existing agencies is not prohibited by the constitutional inhibitions against local laws when general laws exist.—**State vs. Bowles,** 817 Ala. 458, 116 So. 662 and cases cited.

The Act, in my opinion, does not violate Section 29 of the Constitution. Said Act does not provide for the appointment of members of a purchasing committee for a term prohibited by said section. It is silent as to the term of office and silent as to the power of removal. In such a situation the appointing power has the power of removal.—**Touart v. State**, 173 Ala. 453, 56 So. 211. There is also a provision for the filling of vacancies. The Act does not create an office, the appointment to which is for a longer period than good behavior as is prohibited by Section 39 of the Constitution.

If it be true that the Act under consideration is unwise legislation and incapable of practical operation, this fact does not affect its constitutionality. The questions of wisdom, justice, policy or expediency of a statute are for the Legislature alone.—5 So. Sig. 351—Constitutional Law, Key No. 70 (3).

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 10, 1935

Brigadier General John C. Coleman,
The Adjutant General,
Montgomery, Alabama.

National Guard—Under Section 37 (Acts 1931, p. 687, Military Code of 1931), National Guard officer not disqualified from accepting and holding office of City Commissioner of the City of Montgomery.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

Receipt is acknowledged of your request for opinion dated Ocotber 2, 1935, as follows:

"The question has arisen as to the legal point of whether or not William A. Gayle who is to be City Commissioner of the City of Montgomery can be appointed Lieutenant Colonel, State Staff, Alabama National Guard. Under the General Acts of 1931 which sets out the law which the City of Montgomery is operating under your attention is invited to Section 14, page 110, Acts of 1931 which reads as follows:

" 'No member of the commission nor any person holding an office of profit under them, shall hold any office of profit or trust under the laws of any State or the United States, or hold any county or other city office; nor shall the commission or any commissioner ever be elected or appointed to any office created by or the compensation of which was increased or fixed by the commission, while he was a member thereof, within two years therefrom."

"a. Please render me an official opinion as to whether or not William A. Gayle when he assumes the office of City Commission will be eligible to hold the commission of Lt. Colonel, State Staff, Alabama National Guard, from which he will receive approximately seven hundred dollars ($700.00) per annum.

"b. Would the acceptance of this commission disqualify him to hold the office of Associate City Commissioner of Montgomery.?"

Answering your inquiry "a", it is my opinion that Colonel Gayle when he assumes the office of City Commissioner of Montgomery will be eligible to hold the commission of Lieutenant Colonel, State Staff Corps, Alabama National Guard.

In answer to your inquiry lettered "b", it is my opinion that the acceptance of a commission in the National Guard will not disqualify Colonel Gayle from holding the office of City Commissioner of Montgomery.

The Legislature has specifically provided that the acceptance by a person of a commission in the National Guard or Naval Militia, shall not vacate any civil office or position held by him. Section 37 of the Acts of 1931, page 187, (Military Code of 1931), provides:

"Section 37. HOLDING MILITARY OR NAVAL COMMISSION OR MEMBERSHIP IN NATIONAL GUARD OR NAVAL MILITIA SHALL NOT PREVENT A CITIZEN FROM HOLDING CIVIL OFFICE: Any citizen of this state may accept and hold a commission or warrant in the Alabama National Guard or Naval Militia or hold enlisted membership in the National Guard or Naval Militia, or a commission in the Officer's Reserve Corps of the Army of the United States, or Naval Reserve of the United States, without thereby vacating any civil office, position or commission held by him; and the acceptance or holding of any such commission and receiving pay therefrom shall not constitute such holding of an office of privilege and trust under the Government of this State and of the United States as shall be incompatible with the holding of any civil office, legislative or judicial, or position or commission under the Government of this State."

In view of the policy announced in the foregoing excerpt, the acceptance of a Commission in the National Guard will have no effect upon one's eligibility for or acceptance of a civil office of profit; and the acceptance and holding of a civil office of profit will have no effect upon his acceptance of a commission in the National Guard.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 10, 1935.

Hon. B. S. Landrum,
License Inspector,
Chambers County,
LaFayette, Alabama.

Where license inspectors follow the mandates of Section 339, Revenue Law of Alabama, 1929, he is as a matter of right entitled to the fees of the license inspector under the law of Alabama.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of August 1, 1935, in which you request my opinion as follows:

"1. If a License Inspector is appointed for a certain County and he is performing his duties as the law required him, is he entitled to all delinquent fees paid on licenses while he is serving as License Inspector?

"2. If the State Tax Commission send men into a County and these men are not serving as deputy Local License Inspectors and the local License Inspector is not removed or suspended while they are working, who would be entitled to fees collected on licenses while they are working, who would be entitled to fees collected on licenses while they are here, including the ones they cited?"

My answer to your first inquiry is in the affirmative.

When license inspectors for any county has followed the mandates of Section 339 of the Revenue Laws of Alabama, 1929, he as a matter of right becomes entitled to all fees as set out in said Section.

Answering your second inquiry, I know of no such officer as State License Inspector. You will note, Section 339, supra, Revenue Code, 1929, provides that all delinquent citations be made by the license inspector or his deputy, or any other lawful officer. The expression "any other lawful officer" could mean but one thing. That is any lawful officer of the county, license inspector, sheriff, deputy sheriff, etc. Therefore it is my opinion where the license inspector has complied with all requirements of Section 339, supra, he is entitled to all citation fees served in his county by him or his deputy. Biennial Report of the Attorney General, 1930-32, page 724, Biennial Report of the Attorney General 1932-34, page 421, I might add here, that I am construing the Revenue Law of 1929, which remains in operation up to October 1, 1935, unless otherwise provided and what I have to say here does not in any manner attempt to construe the Act of 1935, which goes into effect October first.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 10, 1935.

Hon. Bradford Cooper,
County Treasurer, Marion County,
Hamilton, Alabama.

By Schedule 153 of the Revenue Act of 1935, each person dealing in witness script is liable for a license of $100.00. One transaction or an occasional exchange of goods for witness script unless it was pursuant to a definite policy or plan would not constitute a person a dealer.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 25th, in which you state:

"There have been two or three merchants ask me and the Probate Judge if they could trade merchandise to customers for witness script that has been registered against the fine and forfeiture funds without buying a license. In case they do not pay money for same, using it as a medium of exchange. A former Attorney General said they could according to the old license inspector.

"Please let me hear from you soon on this matter as we have lots of script that would be exchanged for goods in case there is no license to be paid."

In reply, I beg to advise that Schedule 153 of the Revenue Act of 1935 provides as follows:

" * * * * Each person dealing in witness script $100.00".

This provision is similar to Schedule 186 of the 1929 Revenue Compilation except the amount levied is raised from $25.00 to $100.00.

As you will note, the license is placed on each person dealing in script. Ordinarily a dealer is one who buys and sells and indicates a regular manner of business. If these merchants are conducting their business in such a way as to be dealers, they would be liable for the license. I do not think that an individual or casual transaction would constitute them dealers.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 10, 1935.

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Counties—Not authorized to purchase from Clerk of House of Representatives copies of bills introduced or passed.

Opinion by Assistant Attorney General Screws.

Dear Sirs:

I have your letter of September 26, 1935, which is as follows:

"I am in receipt of the following letter from Mr. B. P. Singleton, Examiner of Accounts.

'On an examination that I am now making of the books of the County Commission and Treasurer of Jefferson County, it is noted that the following disbursement was made: Voucher No. 11015, dated August 13, 1935, in amount of $102.50, made payable to the order of E. F. Taylor, Clerk of the House of Representatives. The voucher in payment of,

'House First Readings, 1935 session	$100.00
Copy of H. 186—1 page	1.00
Copy of H. 755—1 page	1.50
	$102.50

'According to the information on the voucher, this disbursement was made at the request of Mr. Ernest Matthews, County Attorney.

'In connection with the above disbursements by Jefferson County, I should like to be advised on the following question:

'Was this expenditure of $102.50 within the provisions of the laws governing the authority of the County Commission of Jefferson County?'

"Please advise me whether or not the Treasurer of Jefferson County has authority to pay the Clerk of the House of Representatives for copies of laws introduced in the Legislature."

I am of the opinion that your first inquiry should be answered in the negative.

I am unable to find any authority, either under the general law or laws applicable only to Jefferson County, that authorizes the expenditures in question, either directly or by necessary implication.

Unquestionably the item "House First Readings, 1935 Session . . . $100.00 was secured for the purpose of protecting the interest of the county in matters of prospective legislation. In dealing with this question in the matter of employment of counsel the Supreme Court held the county had no such authority.—**Stone v. State,** 220 Ala. 437, 125 So. 653. Also in the later case of **Fitts v. Commission of City of Birmingham,** 224 Ala. 600, 141 So. 354, the Court used the following language: "The counties have the right to rely upon the legislative representatives to protect the interest of the respective counties . . . ."

If the securing of the other two items (copies of H. B. 186 and H. B. 175) was for the purpose of protecting the interest of the county in matters of prospective legislation it falls within the rule above set out. If the securing of same was merely for the purpose of information, there is still no authority for the county to purchase said bills. Certain state and County officials are presented with copies of Acts in pamphlet form by the Secretary of State under Section 2927, as amended by Acts 1931, p. 170, as amended by Acts 1932, p. 275.

Your first inquiry having been answered in the negative, it follows that your second inquiry should also be answered in the negative.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 10, 1935.

Hon. W. C. Batson,
Judge of Probate, Chambers County,
LaFayette, Alabama.

The only exemption to disabled persons other than disabled veterans from peddler's license is that contained in Schedule 146 of the 1913 Revenue Act exempting blind persons "when baskets or push carts are the only methods of delivery used."

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 10th, in which you state:

"Will you please give me an opinion right away as to disabled persons, who go before County Health Board, being exempt from Peddler's License.

"I would like to know if, under the new law, they are exempt and if so, just what they can peddle under such exemption?"

From your letter I am presuming that you are referring to disabled persons other than disabled veterans and am so advising you.

Peddlers' licenses are levied by Schedule 104, page 285 of the 1935 Act, which Schedule levies a license on itinerant vendors of drugs who by speech, etc., profess to cure disease. There is a license levied by Section (b) on each itinerant vendor or peddler of medicine of $50.00 to the State and $50.00 to each county. There is no exemption to disabled persons therein. By Section 261, there is a license on traveling vendors of horses and mules, etc., and motor vehicles. There is no exemption to disabled persons in this Section.

The principal section applying to peddling is Schedule 146 levying a license on transient vendors and peddlers as set out at length therein. Exemptions from this Schedule are to be found in the latter part of subsection (d), which provides:

> "This Schedule shall not apply to a person, or to any member of his immediate household, selling or offering to sell dairy, poultry, or farm products raised, produced or grown by himself, or the immediate members of his household, or such products preserved, bottled, or canned by himself, or the immediate members of his household, or to peddlers of wood, or charcoal or to peddlers of fruits or vegetables, or to blind persons when baskets or push carts are the only method of conveyance used, also this schedule shall not apply to those selling fish, shrimp, crabs or other sea foods, candy and peanuts. These, and none other, shall be exempt from the payment of the license tax levied by this schedule."

You will note that the only exemption accorded to disabled persons as such is contained in these words: "or to blind persons when baskets or push carts are the only method of conveyance used."

I therefore advise you that the exemptions to disabled persons as such from license levied on peddlers heretofore existing are repealed by the 1935 Act with this exception.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 11, 1935.

Hon. Frank M. Johnson,
Judge of Probate, Winston County,
Double Springs, Alabama.

Per diem of members of the Court of County Commissioners not payable out of the Gasoline Fund upon authority of Weaver v. Tidwell, 153 So. 218.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 19, 1935, in which you state:

> "Since the General Fund in this County is very small, and since the Warrants on the Gasoline Fund is really a part of the cost of road work, we would like to know if the County Warrants and also the claims for same could not be paid out of the Gasoline Fund?

"Will you please render an opinion on this matter and send us at as early a date as possible?

I am at some loss to know exactly what warrants you propose to pay out of the Gasoline Fund. If you are referring to warrants to the Commissioners Court for their per diem, I beg to advise that there is no authority for paying such warrants out of the Gasoline Fund. See **Weaver v. Tidwell, 153 So. 218.**

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 11, 1935.

Hon. F. W. McLane,
Clerk of the Circuit Court,
Talladega County,
Talladega, Alabama.

Where a defendant is convicted for the decoying away of a child and is sentenced to hard labor for the county, the cost in such case is payable out of the Convict Fund of the State under Section 3667, Code of 1923.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of September 26, 1935, in which you request my opinion as follows:

"Will you please give me an opinion on the following, and oblige.

"One John Rogers was convicted in Circuit Court for Decoying away a Child and sentenced by trial judge to 12 months hard labor for the County.

"Will you please advise me if I should issue an execution against the defendant for all the costs in this case, and if same is returned by sheriff no property found, will the costs of the Sheriff, Clerk and witnesses fees be a proper charge against the Fine and Forfeiture funds, and oblige."

Answering your inquiry, where a county turns its convicts over to the State, under an Act approved February 18, 1927 (General Acts, 1927, page 52), this cost would be payable under Section 3667, Code of Alabama, 1923, by the State out of the Convict Fund. It is true this Section, as it appears in the Code, applies only to penitentiary or felony cases but is made applicable to misdemeanor cases by the Act referred to above. See Section 3. Of course you can at any time before the defendant actually works out the sentence for cost, issue execution for same or any balance due, but after the defendant has completed his sentence, no execution can issue for any purpose. **Biennial Report of the Attorney General, 1932-34, p. 436.**

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 11, 1935.

Hon. Roy Sanderson,
Probate Judge of Marion County,
Hamilton, Alabama.

(1) When indebtedness of county has reached constitutional limit as provided by Constitution, Section 224, and there will not be in treasury during fiscal year more than enough to meet preferred claims, governing body cannot legally appropriate to any matters of the class voluntary with such body.

(2) Budget System of counties.

(3) Act. No. 110, Senate Bill No. 70, amending Section 231, Code—Agriculture appropriation made preferred claim in certain instances.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of September 13, 1935, which is as follows:

"Will you please answer the following question and give me your legal opinion at the earliest possible date?

"The fund of the general fund of the county is now exhausted and the income for the coming tax year is already spent. The Court of County Commissioners continue to appropriate money from the general fund. The money is not there to appropriate. The income in the county is not sufficient to take care of the expenses. I want to know if the Court has the right to appropriate money when it is not in the treasury and will not be within the next year or two.

"Will you please inform me further if it is not necessary for the Commissioners Court to place the County on the 'Budget System' and provide sufficient revenue for the expenses and appropriations.

"Yesterday the Court of County Commissioners appropriated $1,000.00 for the purpose of buying a terracing machine, payable $500.00 February 1, 1936 and $500.00 February 1, 1937. The Treasurer of the County informs me that there will not be sufficient money in the treasury to take care of these warrants as there are already sufficient claims registered to take up the 1936 taxes together with the official salaries and preferred claims for paupers, etc., which are set aside by statute. I want to know if the Court have the right to order such warrant issued and I, as Judge of Probate have the right to issue such warrant without providing funds to pay the same."

You ask my opinion on three questions which are, in substance, as follows:

1. Has the Court of County Commissioners the right to appropriate money when there is not sufficient money in the county treasury to meet the appropriations?

2. Whether or not the law imposes upon the Court of County Commissioners the duty of placing the County on the "Budget System"?

3. Whether or not the Court of County Commissioners have the right to order a warrant issued and you the right to issue said warrant to pay for the purchase of a terracing machine when the condition of the treasury is so depleted as to be unable to take care of registered claims and preferred claims as prescribed by statute?

In answer to your first inquiry, I refer you to an opinion rendered by this office on September 30, 1932, to Dr. J. N. Baker, State Health Officer, (Biennial Report Attorney General 1930-32, p. 1057) wherein after holding that the legitimate county debts or obligations are of two classes, namely, (1) Those which are prescribed and imposed by law and are purely involuntary as to a county; (2) Those which are merely authorized by law, and may be assumed by the county when the condition of the county treasury will admit of it, said as follows:

> "* * * but if, at any time, the indebtedness of the county has reached its constitutional limit as provided by Section 224 of the Constitution, and there will not be in the County Treasury during the then current fiscal year, more than enough to meet the payment of the preferred claims of the first and second classes as above named, the Court of County Commissioners or other like governing body, cannot legally appropriate to any matters of the class voluntary with such court. * * * "

I am herewith enclosing copy of the above mentioned opinion.

I am also enclosing a copy of a recent enactment of the legislature of this State, when it goes into effect on October 1st, 1935, will materially affect the entire fiscal affairs of the various counties. I refer to Act No. 379, House Bill No. 191, approved September 9, 1935. Section 7 of said Act reads as follows:

> "No warrant or order for money shall be issued in pursuance of authority of the Board of Revenue, County Commissioners or other like governing body until funds are available for its payment upon presentation to the Treasurer or depository * * * "

In answer to your second inquiry, I refer you to Section 6789, Code of Alabama, 1923, wherein the governing bodies of the counties are charged by law with the duty of adopting a budget system. Said section is as follows:

> "Courts of county commissioners, boards of revenue, or other governing bodies of counties **must** adopt a budget system for the conduct of the affairs of the county, and to this end may appropriate from the county treasury sufficient funds to pay the actual expenses of the county as shown by the budget so adopted."

The 1935 Act, referred to above, will also materially affect the last quoted section.

The answer to your third inquiry is likewise affected by an Act of the 1935 Legislature, to-wit: Act No. 110, Senate Bill 70, approved June 6, 1935, amending Section 231, Code of 1923, a copy of which I am also enclosing herewith. Subsection 4 of said Act reads as follows:

> "The following claims are declared to be preferred claims against the county, and they shall be given priority in the order named: * * * 4. All claims authorized to be paid from funds appropriated by the governing body of the county to assist in financing a program of agriculture and

farm home life in cooperation with the Extension Service created under Act of the Congress of the United States approved May the 8th, 1914, and generally known as the Smith-Lever Act for Extension work in agriculture and home economics."

In view of the above provision, if the warrant was ordered issued to assist in an agricultural program as so specified, then the Court of County Commissioners was not only authorized to issue the warrant but the County Treasurer is compelled to set aside funds to pay said warrant.

Yours very truly
A. A. CARMICHAEL,
Attorney General.

October 11, 1935.

Hon. U. G. Jones,
Deputy Solicitor, Elmore County,
Wetumpka, Alabama.

Section 425, et seq., of Code authorize the Court of County Commissioners to readjust the boundaries of election precincts whenever such readjustment has reasonable relation to the requirements of the statute that not more than 300 votes shall be contained in one election district.

Opinion by Assistant Attorney General Bibb.

Dear Sir:

I have your letter of September 16, 1935, in which you request my opinion on the following question:

Does the Commissioners Court of Elmore County, Alabama have authority to make such changes in beat or precinct lines in the county as, in the judgment of the court, may appear proper, without regard to the numbers of voters in the beats or precincts to be affected?"

In my opinion the statutes do not give the Court of County Commissioners such unlimited authority in that regard.

Section 425 of the Code provides:

"425. Election Precincts. The counties in this State as now divided into election precincts, and the boundaries of such precincts as now defined, shall so remain until changed by order of the court of county commissioners or board of revenue, or other governing board of the county. Whenever such election precincts, as now existing, contain more than five hundred legal voters, said election precincts shall be divided or subdivided into election districts."

Touching further the authority to re-arrange precinct lines, Section 428 provides:

"428. Precincts or Districts: Now changed.—Whenever, at any general or primary election in any election precinct or district, over three hundred votes shall have been cast, the court of county commissioners or board of revenue, or other governing board of said county shall readjust the boundary lines of said election precincts or election districts and may divide or consolidate any number of precincts or districts and resub-

divide the same in order that not more than three hundred voters shall be contained in any one election district."

These and connected sections, Sections 425-436, do not appear to have been construed in this regard by the higher courts, but, taken together, their purpose is fairly clear. It appears to be the purpose of these provisions to bring about a certain degree of uniformity in the election process and to expedite the conduct of elections by requiring that the number of voters in any one district within the established precinct shall not normally be in excess of three hundred. The Court of County Commissioners is, generally speaking, a court of limited jurisdiction, and the authority granted it by these sections should be interpreted with regard to the apparent purpose of the statutes. Section 425 is not a general delegation of express authority, but simply provides that the boundaries of all election precincts should remain as they were at the time the code was adopted until properly changed by the governing body of the County. Section 428 is more expressive of the legislative purpose, and the authority conferred, in requiring such governing body of the County, whenever more than three hundred votes are cast in any election precinct or district, to readjust the boundary lines of such precincts or districts by division or consolidation of precincts or districts, **to the end that not more than three hundred voters shall be contained in any one election district.**

It is therefore my opinion that these statutes authorize the Court of County Commissioners to readjust the boundaries of election precincts, not at will or capriciously, but in a manner having reasonable relation to the requirement of the statute that not more than three hundred voters shall be contained in any election district. When this proper relation of the occasion of the readjustment to the purpose of the statute exists, the Court of County Commissioners may consolidate precincts or districts or change their boundaries in any appropriate manner which in its discretion it deems advisable.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 11, 1935.

Hon. F. W. Campbell,
Chairman, Jury Board,
Jackson County,
Scottsboro, Alabama.

Juries—Jury Board created under Act No. 47, H. B. No. 70, approved February 20, 1935 (Acts 1935, p. 55) need not necessarily employ clerks.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your telegram of September 23, 1935, which is as follows:

"As an act of economy can a jury board dispense with the services of a clerk and board members do all the work themselves?"

I am of the opinion that your inquiry should be answered in the affirmative. However, the members of the Board would not be entitled to the compensation allowed the clerk of said Board.

The Jury Boards of this State function under Act No. 47, H. B. 70, approved February 10, 1931 (Acts 1931, p. 55). The employment of the clerk of the Jury Board is authorized by Section 8 of the said Act. In said section the word "may" is used. I am unable to find any provision of the Act in question that makes it mandatory that a clerk be employed. If the members of the Jury Board themselves are willing to perform the dutties of the clerk without any additional compensation, I see no objection to them so doing.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 14, 1935.

Hon. Henry S. Long, President,
State Tax Commission,
Capitol.

Where a taxpayer received income in 1933 as a recovery on a bad debt, which had been ascertained to be worthless and charged off prior to January 1, 1933, such income should be reported and included in the gross income of such taxpayer for the year 1933.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of August 31st, in which you state:

"Advice is requested as to whether, under the Alabama Income Tax Law of 1933, approved April 17, 1933, an amount received during the year 1933 as a recovery on a bad debt which had been ascertained to be worthless and charged off prior to January 1, 1933, the effective date of the Alabama Income Tax Law, constitutes taxable income during the year 1933.

"It is the taxpayer's contention that the debt in question was ascertained to be worthless and charged off during the year 1932, deducted on his federal income tax return and allowed as a proper deduction after investigation by an agent of the United States Internal Revenue Department; that, due to improved financial conditions, the debtor was able to liquidate the account in part during the year 1933 and that the amount paid was included in his federal income tax return for the year 1933 as taxable income, having been properly charged off and allowed as a deduction, but that it does not constitute taxable income to the State of Alabama under the Alabama Income Tax Law. He agreed to be governed by a decision rendered by your office."

In reply I call your attention to Section 10 of the Income Tax Act of 1933 providing in part as follows:

"The term 'gross income' as used herein: (1) Includes gains, profits and income derived from salaries, wages or compensation for personal services of whatever kind, or in whatever form paid, including the salaries, incomes, fees or other compensation of State, County and Municipal officers and employees, or from professions, vocations, trades, business, commerce or sales or dealings in property whether real or personal, growing out of ownership or use of or interest in such property; also

from interest, royalties, rents, dividends, securities or transactions of any business carried on for gain or profit and the income derived **from any source whatever."**

As this income was actually received in the year 1933, it appears to me that it should be included in the gross income for such year. It is certainly within the term "income derived from any source whatever."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 14, 1935.

Hon. S. W. H. Williams,
County Solicitor of Hale County,
Greensboro, Alabama,

Assessment to "estate of" or "heirs of" decedent void and will not support tax sale.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter in which you enclosed the letter of Hon. V. F. Crabtree, Tax Collector of Hale County. Mr. Crabtree's letter is as follows:

"Will you please give me an opinion how I shall legally proceed to sell the property of A. L. Mathews heirs.

"It seems that the taxes on this property have been running about three years. The heirs are unknown and I would like to get this matter cleared up."

I refer you to an opinion rendered by this office on March 15, 1929, to the Tax Collector of Baldwin County (Biennial Report Attorney General, 1928-1930, p. 232), a copy of which is herewith enclosed, wherein it is held that assessment to "estate of" or to "heirs of" decedent is irregular and will not support decree of sale so as to convey title to real estate to purchaser.

In view of the fact that you state that you have been unable to ascertain the persons who have the legal title to the property by virtue of the law of descent and distribution, I am of the opinion that the present assessment should be voided and the property assessed to heirs unknown in accordance with the law on that subject.—**Section 165-254, Revenue Laws, 1929: Sections 53-218, Revenue Laws, 1935.**

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 14, 1935.

Hon. Irvine C. Porter,
Justice of the Peace,
203 Comer Bldg.,
Birmingham, Alabama.

Justices of the Peace—may issue alias execution against the plaintiff for costs created by him, in the event prior executions against him have been returned nulla bona.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion dated August 1, 1935, as follows:

"Under the terms of Section 7263, Code of Alabama, 1923, would a Justice of the Peace be authorized and empowered to issue an alias execution for costs against the plaintiff after an execution against the defendant in that same case has been returned 'no property found' by proper officer and a prior execution issued against the plaintiff in that same case has also been returned 'no property found' by proper officer?

"Would the effect of Section 7255 of the Code of Alabama, 1923, and the cases cited thereunder cause a strict construction to be applied to Section 7263 in that no express authority is given by Section 7263 to Justices of the Peace to issue alias executions against plaintiffs for costs incurred after an execution against the defendant has been returned 'no property found' by proper officer?

In my opinion, a Justice of the Peace may issue alias execution against the plaintiff for the collection of costs specified in Section 7263 of the Code.

Section 8730 of the Code provides in part that alias writs of execution for the collection of judgments returned may be issued by Justices of the Peace.

Section 7263 of the Code authorizes issuance by the Justice of the Peace of execution against the plaintiff for the costs actually created by him, after return of an execution nulla bona against the defendant.

Of course, the law of costs is penal and must be strictly construed. However, the Supreme Court in the case of Swindle vs. Crocker, 217 Ala. 199, (which was a case involving costs) said: "A necessary implication serves every purpose of an express command."

In my opinion by necessary implication, if not in fact by express provision, Section 7263 of the Code authorizes the issuance of alias execution against the plaintiff for the costs created by him, when the original execution issued against him for collection of said costs was not effective to serve the purpose intended.

Yours very truly,
A. A. CARMICHAEL,
Attorney General,

October 14, 1935.

Hon. L. A. Garrison,
Judge of Probate,
Walker County,
Jasper, Alabama.

1. Costs and fees of officers collected upon redemption of lands at tax sales, should be payable to the officer holding such office at the time the fees accrued, and should be allocable to the year in which such fees accrued.

2. Such fees collected on redemption, which accrued since September 1, 1933, the effective date of the so-called Sparks Amendment, should

be considered as a part of the income of the office for such year and are controlled by such amendment in the same manner as other fees and compensation received by such officer during such period.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 4th, in which you state:

"This county has a large amount of property sold at tax sales during the past several years. Most of this property was bought in by the State of Alabama.

"The out-going Tax Collector, term expiring September 30, 1935, has been Tax Collector of this county for the past eight years. Most of the tax sales referred to above have not been redeemed and when the property is redeemed there will be a large amount of fees.

"This letter is written asking your opinion as to whether or not these fees should be paid over to the out-going Tax Collector after his term expires September 30, 1935.

"This office has no information as to whether or not he has received full pay for his services as Tax Collector.

"The Sparks Bill, page 46, General and Local Acts of Alabama, Extra Session 1933, would seem to limit the salary of any official to $6,000.00

"Section 161-A of the 1935 Revenue Bill set out fees, compensation and earnings of the Tax Collector shall not exceed $5,400.00 net, annually."

It is my judgment that fees and costs of officers which are collected on redemptions should be paid to the officers entitled to such fees and in your case, to the Tax Collector who was in office at the time of the sale, or at the time the fees accrued. I do not think that the so-called Sparks Amendment will affect this except possibly since September 1, 1933, the date at which said amendment became effective. As you state, this amendment limited the maximum compensation of any official to $6,000.00. This office has heretofore held that this maximum applied to the amount received by the officer after the payment of reasonable operating expenses of the office. If it should be the case, in your County, that subsequent to September 1, 1933, after the payment of reasonable expenses of the office and a compensation to the Tax Collector of $6,000.00 there should be an excess, such amount should be paid to the Tax Collector to be held in trust by him pending such action as the Legislature may take relative to the disposition of such excess.

The fees of officers collected on redemption should be allocated in my opinion, properly to the year in which they accrued and consequently, any fees going to the Tax Collector on redemptions, which accrued prior to September 1, 1933, are not affected by the Sparks Amendment, but any which have accrued since then would be affected subject to the conditions I have heretofore outlined.

In view of the foregoing, it would not appear that the out-going Tax Collector would be affected in any way by Section 161 (a) of the 1935 Revenue Act.

See opinion of Attorney General to Hon. S. D. McGee, Tax Collector, Tuscaloosa County, under date of March 6, 1934, copy of which is herewith enclosed.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 14, 1935.

Hon. B. D. G. Waddell,
Deputy Solicitor,
Seale, Alabama.

Public Officers—Temporary change of domicile does not disqualify citizen for public office.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of August 27, 1935, in which you ask in substance, does the temporary removal from a city, with no intention to establish a new or permanent residence compel such loss of citizenship in the city, from which the citizen has removed, as to disqualify him to hold public office? You enclose an affidavit as follows:

"Columbus, Ga.
July 27, 1935.

"Attorney General,
Montgomery, Alabama.

Dear Sir:

"This is to certify that Mr. C. C. Slocumb of Phenix City, Alabama, has been employed by the Eelbeck Milling Company for several years and working the city trade with Eelbeck Products. On account of a very large crop of corn in the section of Eelbeck Mill last season I insisted on Mr. Slocumb coming out and staying at the mill for four or five months on account of being convenient in handling the local corn meal. Mr. Slocumb owns his home in Phenix City, and stated at the time that he would only be willing to live at Eelbeck until July 1st, something like a camping place. At no time has Mr. Slocumb intended to move his former residence or citizenship from Phenix City.

Yours very truly,
EELBECK MILLING COMPANY,
By: C. R. Mehaffey,
C. R. Mehaffey, Pres.
By: L. N. McPherson,
L. N. McPherson, V. Pres.

Edel Maggie Roberts,
N. P.

In my judgment the two controlling factors that answer this question are the **intention** of the removing citizen **as to the permanency of such removal and the actual removing** of the citizen to the new domicile. Two factors necessary to perfect a change of domicile are, the intention of the citizen to change his residence permanently, and the actual removal of the citi-

zen to such new residence. These two factors must co-exist, however, but intention seems to be the controlling of the two.

Section 366, Code of Alabama, 1923, provides as follows:

"Residence not acquired or lost by temporary absence.—No person shall lose or acquire a residence either by temporary absence from his or her place of residence without the intention of remaining, or by being a student of an institution of learning, or by navigating any of the waters of this state, the United States, or the high seas, without having acquired any other lawful residence, or by being absent from his or her place of residence in the civil or military service of the state, or the United States; neither shall any soldier, sailor or marine, in the military or naval service of the United States, acquire a residence by being stationed in this State."

In the case of Boyd vs. Beck, 29 Alabama 703, the Court said:

"In the case of the State, ex rel. Spence v. The Judge of the 9th Judicial Circuit, 13 Ala. 805, it was decided, that 'where one has acquired a fixed domicile, a temporary absence on business or pleasure, with the intention of returning, and actual return in accordance with such intention, will not work a change of domicile.' Sears v. The City of Boston, 1 Metc. 250; Bampde v. Johnstone, 3 Vesey, Jr., 198. Where persons conduct a business at two or more places, devoting a portion of their time to each, **the intention of such persons, when it can be ascertained, exercises a controlling influence in determining the domicile.**—Story on Conflict of Laws, Section 47; Harvard College v. Gore, 5 Pick. 370; Somerville v. Lord Somerville, 5 Vesey, 787-8-9." (Emphasis supplied).

In the case of State v. Hallet, 8 Ala. 159, the rule is stated as follows:

"The question presented upon the record, has always been considered one of great moment, and has given rise to much discussion, and ingenious, subtle, reasoning, both in the civil and common law. It appears, however, to be well settled, that when a domicile has been acquired, it is not lost until a new one is actually gained, facto et animo. The mere intention to change the domicile, without an actual removal, **with the intention of remaining, does not cause a loss of domicile."**
(Emphasis supplied.)

I further refer you to the case of Polk vs. Howle, 227 Ala. 154, in which the Court discusses the question in the following language:

"The effect of these cases may be thus stated: When the fact of the legal residence of a citizen is once established, such fact of residence is presumed to continue, and this presumption prevails until it is established by the evidence that he has elected to or has established a residence at or in another place. It may further be stated that, while the determination of the place of legal residence of a citizen presents a question of fact, yet, in determining that fact, the intention of the citizen presents a question of fact, the intention of the citizen is entitled to and must be given due consideration in connection with his relevant acts. It is this combined result of intention and acts—speaking for the voter of his actual domicile, official residence as a citizen and as an elector, seeking to cast or undertaking to cast his vote—that determines the right to vote in such precinct.

In the instant case and under the facts as stated coupled with a careful consideration of the above cited authorities, it is my judgment that the facts as stated do not within themselves operate to disqualify the citizen from holding the office of City Commissioner of Phenix City, if elected to the said office.

I wish to further refer you to the following opinions of the Attorney General:

Biennial Report 1930-32, page 718, opinion rendered to Hon. E. C. Croley, DeKalb County, February 25, 1932. Biennial Report 1928-30, page 728, opinion rendered to Hon. Posey Smith, Coosa County, January 10, 1930, and to the authorities cited in these opinions.

Very truly yours,
A. A. CARMICHAEL,
Attorney General,

October 14, 1935.

Hon. D. E. Laslie,
Judge of Probate,
Macon County,
Tuskegee, Alabama.

The filing tax for a deed is measured by the value of the property conveyed by the deed.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of September 12, 1935, in which you stated that Mr. S. R. Parks, an officer of the Alabama Relief Administration, would present to me a deed which is to be filed for record in the Probate Office of Macon County, wherein the Alabama Rural Rehabilitation Corporation is the grantor and the Tuskegee Self-Help Corporation the grantee.

Mr. Parks stated to me that the property which the deed conveys has been appraised and valued at $24,000.00, and that while the deed recites the fact that there is a mortgage outstanding on the property in the sum of $68,000.00, said mortgage also covers or includes a large sum of money which has been or is to be advanced to said Tuskegee Self-Help Corporation by the Alabama Rural Rehabilitation Corporation.

The deed recites a consideration of $1,000.00 and other valuable consideration.

You desire an opinion of this office as to the amount of deed filing tax which should be paid on the deed.

I cannot determine for you the amount of filing tax to be paid in view of the fact that I have no means of determining the approximate value of the property conveyed by the instrument. This office has heretofore held that the filing tax for a deed is measured by the value of the property conveyed by the deed.

Biennial Report of Attorney General 1928-1930, pp. 210, 683;
Biennial Report of Attorney General 1932-34, p. 149.

This value, of course, must be determined by you. I do not think that the amount of an outstanding mortgage on the property conveyed by the instrument to be recorded would necessarily be conclusive on you in determining the value of the property.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 14, 1935.

Hon. B. L. Malone,
Judge of Probate,
Morgan County,
Decatur, Alabama.

1. Under subsection 3 of Section 353 of the Revenue Act of 1935, all licenses payable to the Probate Judge bear interest at the rate of 6% from the date of delinquency.

2. Said Act does not provide for a chauffeur's license.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of August 24, in which you state:

Sub-section (c), Section 353 of the new Revenue Bill provides as follows: All licenses levied by this Act except as otherwise provided . . . . Where any license issuable by the Probate Judge or Commissioner of License shall be delinquent, the same shall be subject to a penalty of 15 per cent. of the amount of the license, which penalty must be collected by the Probate Judge or Commissioner of Licenses when the license is taken out together with interest at 6% from the date of delinquency. Subsection (e) provides: The Probate Judge in remitting such penalties shall file report . . . showing the amount of such penalties collected, from whom, and for what, the amounts paid to the License Inspector and the amount remitted, etc.

"Please inform me if the 6% interest should be collected on all delinquent licenses, that is, automobile, privilege, etc., and to whom the 6% is remitted. Also advise if the 15% penalty as provided in Sub-section (c), Section 353, is payable to the License Inspector.

"I fail to find the levy of a Chauffeur License yet Schedule 158.4, page 331 of the New Revenue Bill provides that 'drivers of automobiles, hearses and ambulances shall be required to secure chauffeur's license."

In answer to question one, I advise you that the 6% interest provided in sub-section 3 of Section 353 of the Revenue Act of 1935 applies to all delinquent licenses whether automobile, privilege or otherwise, and payable to the Probate Judge.

With reference to payment of penalties to the license inspector, I advise that this question is still under consideration. Copy of opinion will be mailed you when the same is finally approved.

In answer to your third question, the Act does not provide for a chauffeur's license, and hence that provision of Schedule 158.4 providing that

"drivers of automobiles, hearses and ambulances shall be required to secure a chauffeur's license" is in my opinion without force and effect. It is true that Section 411 of the Act provides that all laws or parts of law in conflict with the provisions of this Act are hereby repealed, provided that all provisions of existing laws relating to taxation and reveenue, which are not in conflict with the provisions of this Act and which are not herein expressly repealed are hereby repealed, casts some doubt on this provision. However, the chauffeur's license required by the present law was incorporated in the Motor Vehicle Act of 1923 as Section 25. This Act is entirely rewritten in the Revenue Bill of 1935 with the provision requiring a chauffeur's license omitted. It seems to me that there was an attempt on the part of the Legislature to give a complete treatment of the subject and that the omission of the chauffeur's license was purposive, and hence by clear implication of law the same was repealed.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 15, 1935.

Hon. W. L. Pratt,
Judge of Probate, Bibb County,
Centreville, Alabama.

1. Under Section 370-A of the Revenue Act of 1935, the Probate Judge, out of the fees, commissions and other income accruing to such office, is authorized to pay the necessary office expenses not to exceed the amounts set out in said section, and to retain a net compensation of $6,000.00.

2. Under Section 370-B after the payment of such office expenses and suth net compensation, any excess remaining is payable by the Probate Judge into the General Fund of the County Treasury.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of August 28th in which you state:

"Section 370-A of the Revenue Bill, 1935 General Acts of Alabama, House Bill 324, provides: The fee, compensations and earning of the Judges of Probate allowed under the Revenue Laws of the State, shall not together with all other fees, compensations, allowances and earning to them, exceed Six Thousand Dollars net per annum, after the payment of the salaries for clerks, typists, stenographers and other office expenses in counties where the Judge of Probate is not paid a fixed salary; and the expenses of the office in such counties for clerks, typists, stenographers and other expenses shall not exceed in counties having a population according the Federal Census as follows: 10 to 30 thousand—$300.00 per month; etc.

"Bibb County, Alabama, has a population between the above mentioned limitations and I am the Judge of Probate thereof.

"With references to the above mentioned law and facts I desire the following opinion from you, to-wit:

"1. From what fund am I as such Judge of Probate of Bibb County, Alabama, authorized to pay the clerks, typists, stenographers and other expenses of my office out of?

"2. Under the Law above referred to and the other Law of Alabama am I as the Judge of Probate of Bibb County, Alabama, authorized to pay the expenses of my office for clerks, typists, stenographers and other expenses, out of the general funds of the County so long as the same does not exceed the sum of $300.00.

"3. In other words may said expenses, as set out in the above state Law, be paid out of the general funds of the County; and if not, what fund may they be paid out of? "

In reply I beg to advise that as I interpret Section 370-A of the Revenue Act of 1935, it is not contemplated that the expenses of the office be paid out of the County Treasury. The expenses of the office, not, as you state, in your County to exceed $300.00 a month, shall be paid by the Probate Judge out of the usual fees, commission and other compensation inuring to such office. After the payment of such expenses, not to exceed the specified amount, the Probate Judge is allowed a compensation of $6,000.00.

By Section 370-B, if the total income from the office exceeds those amounts, such excess is payable by the Probate Judge into the General fund of the County.

I have not answered your questions in numerical order, but I believe the foregoing fully answers them all.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 15, 1935

Hon. Daniel T. McCall, President,
Board of Revenue and Road Commissioners,
Mobile County, Mobile, Ala.

Sparks Amendment, Excess Fees—

1. Under the so-called Sparks Amendment, an officer is entitled to $6,000.00 net salary to him, plus a reasonable amount for the expenses of his office.

2. When fees or other compensation are fixed by law for a certain office, such fees or other compensation should be paid to such officer by the parties required to make such payment, the total of which to be accounted for by such officer under the terms of Act No. 388, approved September 9, 1935.

3. If a fee or other compensation is properly and legally payable to a certain officer by another officer or board, there is no liability on such officer or board if the officer receiving such fee or compensation fails to make a proper accounting therefor.

4. In the absence of fraud the determination of what are the reasonable expenses of a particular office addresses itself primarily to the officer responsible for carrying out the duties of such office.

5. Under Act No. 388, approved September 9, 1935, every officer is required to make a full and detailed accounting of the reasonable expenses of conducting his office and pay over to the general fund of the county or state within ninety (90) days after the effective date of the Act any excess over and above the reasonable expenses of conducting his office and a net salary of $6,000.00.

6. The annual term is fixed by said Act as from September 1st to August 31st; the remaining portion of the year 1935 from September 1st, 1935 to September 30, 1935, shall be prorated for and during the year from September 1, 1935 to August 31, 1936.

Opinion by Assistant Attorney General Moore.

Dear Sirs:

I have your telegram of September 19, 1935, in which you make the following inquiry:

"Under the laws of Alabama the Tax Assessor is authorized to receive compensation for completing lot block and abstract books of real estate in his county if his net fees amount to $6,000.00 or more can the compensation for the lot block and abstract books be paid in addition to the $6,000.00 limited by the Sparks Amendment."

In reply, I beg to advise that in an opinion to Hon. S. D. McGee, Tax Collector of Tuscaloosa County under date of March 6, 1934, a copy of which I enclose, I held that an officer was entitled to the salary of $6,000.00 net to him, together with the reasonable expenses of his office and that the Tax Collector must pay to the Assessor all fees and commissions due by him.

Under date of February 4, 1935, in an opinion to Hon. G. H. Howard, Judge of Probate of Elmore County, I held that the salary of the Judge of Probate as Ex Officio Judge of the County Court and his per diem as Chairman of the Court of County Commissioners must be taken into consideration in determining the total salary paid him, which can in no case exceed $6,000.00 net to him. In an opinion to John D. McNeel, Comptroller, under date of February 19, 1935, I held that any excess over and above his salary of $6,000.00 and the reasonable expenses of the office must be held in trust by such officer awaiting disposition by the Legislature.

Applying these conclusions to your particular question, I advise that the Tax Assessor of Mobile County is entitled to $6,000.00 net to him, plus the reasonable expenses of his office. The amount which he receives for completing his lot, block and abstract books is to be included in determining the total compensation received by him. The question arises, should the county pay to the Assessor the amount due him for preparing such lot, block and abstract books if his total compensation exceeds the amount of $6,000.00 and the reasonable expenses of his office.

It is my judgment that in the absence of fraud, the determination of what are the reasonable expenses of a particular office address itself primarily to the officer responsible for the carrying out of the duties of such office and hence, as a general proposition, all fees, compensation, commissions or allowances which are payable to him under the law should be paid to him and out of the total, he should pay the reasonable expenses of the office and the salary net to him of $6,000.00 and any excess should be paid by him into the County Treasury.

I also am in receipt of the following letter from the Hon. George A. Sossaman, Attorney for the Board of Revenue and Road Commissioners of Mobile County on the same general subject, in which the following inquiries are made:

"1. Does the $6,000.00 limitation in the Sparks Amendment mean the gross or the net sum to be received by any officer covered by said amendment?

"2. If it means net, then what is the duty and liability of the Board of Revenue and Road Commissioners of Mobile County, in issuing warrants to any such officer in payment for services rendered Mobile County, when it is impossible to tell from his official records whether or not he has received $6,000.00 net during the current year?"

The answer to the first question is given in the foregoing.

The answer to question 2 involves the construction of Act No. 388, House Bill 515 by Hendley, approved September 9, 1935, requiring the excess funds received by any officer to be paid into the County or State Treasury.

Section 2 of said Act provides as follows:

"Section 2. That hereafter such officer or person be, and he is hereby required to make an accounting to the proper officials of his County or the State of Alabama, as the case may be, and pay over to his County, or to the State of Alabama and to the credit of the general fund of his said County or said State of Alabama respectively, as the case may be, within ninety (90) days after this Act becomes effective, and within twelve (12) months thereafter, any and all fees, funds or money received by him in excess of his said salary or amount due him and the reasonable expense of conducting his said office, and at such times shall make a full and detailed accounting of such reasonable expense of conducting his said office. For the purposes of accounting and paying over any and all amounts due to be paid hereunder to Counties or State, the annual term or year for or during which the limitation of $6,000.00 per annum, provided for in the Constitutional Amendment referred to in Section One hereof, shall be from September 1 to August 31, and the remaining portion of the year 1935 from September 1, 1935, to September 30, 1935, shall be prorated for and during the year from September 1, 1935 to August 31, 1936."

Section 3 provides as follows:

"Section 3. That any officer who neglects or fails to make a full and detailed accounting required by this Act within the time provided for in this Act shall be guilty of a misdemeanor and shall be punished accordingly."

As a general proposition, it is my opinion that the Board of Revenue should pay to an officer such fees as are properly due him under the law and that he should account strictly for all fees, commissions or compensation of any sort received by him during any annual period and pay the excess over and above his salary of $6,000.00 and the reasonable expenses of his office into the General Fund of the County Treasury. However, Mr. Sossaman's letter suggests that it is impossible to tell from his official records whether or not he has received $6,000.00 net during the current year.

Sections 2 and 3 of Act No. 388 make it the mandatory duty of such officers to make a full and detailed accounting of such reasonable expenses of conducting his office. It, therefore, appears to me that if such officer fails or refuses to make the full and detailed accounting required by said Act, that the Board of Revenue would be authorized, if it was of the opinion that such officer had actually received funds sufficient to pay the reasonable expenses of his office as determined by such officer and a salary of $6,000.00 net to him, to withhold the payment of such funds pending the proper accounting by such officer.

If, however, I properly understand Mr. Sossaman's inquiry, he desires to know if there would be liability on the Board of Revenue for issuing warrants to such officer for services which were properly payable to him by the Board of Revenue. In my opinion, there would be no liability on the Board of Revenue for so doing. The responsibility is upon the officer to make the proper accounting. As a general proposition, he is entitled to all the fees and compensation fixed by law and if the proper authorities pay him such fees as are proper and are provided by law, I do not think there would be liability on the person paying him such fees, because such officer subsequently failed to make a proper accounting. The penalties fixed by Act No. 388 are upon the officer for failing to account. It would appear, however, that as the excess is payable to the county, the Board of Revenue, or, in your case, the Board of Revenue and Road Commissioners, if it be of the opinion, based on a reasonable knowledge of the facts that such officer has received an excess over the reasonable expenses of his office as determined by such officer and his salary of $6,000.00 net to him, it would be authorized to withhold such payments pending a proper accounting.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 15, 1935.

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

The shares of State Banks which make the returns and pay the tax, if any, due under the provisions of Acts of 1933, p. 104, are not subject to ad valorem taxation.

Opinion by Assistant Attorney General Bibb.

Dear Sir:

I wish to acknowledge receipt of your letter of August 21, which is as follows:

"In Volume 229, Alabama Report, page 180, case of The Union Bank & Trust Company vs. Blan, State Treasurer, an opinion was rendered relative to the payment of a tax on capital stock and shares in State Banks.

"Section '6' page 112 of 1932 Acts reads as follows:

" 'Ad valorem Exemptions and Credits. All moneyed capital employed in the business the privilege of engaging in which is hereby taxed

and the shares of all financial institutions, as in this Act defined, shall be exempted from assessment and payment of ad valorem taxes, including those for the current tax year 1931-1932, except the moneyed capital and shares of any business hereby taxed which fails to make and file the returns required by this Act and to pay the tax levied by this Act as and when in this Act provided. The real estate owned by every such financial institution shall not be exempted. If any other tax whether on property (other than ad valorem taxes on real estate), income, business or any element thereof, except license taxes not in excess of those heretofore legally levied and in effect, be levied by this State or by any political subdivision of this State on any financial institution as in this Act defined, the amount of such other tax due by such institution shall be credited on account of the tax payable pursuant to the provisions of this Act.'

"You will notice that Section '6' exempts Banks from payment of an Ad Valorem tax except the moneyed capital and shares of any business hereby taxed which fails to make and file the returns required by this Act and to pay the tax levied by this Act as and when in this Act provided.

"Please advise if a State Bank has to pay ad valorem tax on moneyed capital employed for the years 1933-1934, etc. I wish to call your attention to an opinion found in Volume 161—No. 6 Southern Reporter, page 793, dated May 16, 1935).

In my opinion, under the clear provisions of the Act involved (Acts 1933, p. 104) which superceded the Act of 1932 referred to, the shares of a State Bank making the returns and paying the amount of taxes due thereon, if any, as required by Section 6 of this Act, are not subject to ad valorem taxation.

The decision referred to in your letter, Union Bank and Trust Company vs. Blan, 229 Ala. 180, merely held that the attempt made in the 1932 Act (Acts 1932, p. 112) to exempt the named institutions from the shares tax which had already accrued for the year 1931-1932 was unconstitutional and invalid, but being severable, the invalidity of that portion did not affect the remainder of that Act or its operation thereafter. The decision in State vs. Birmingham Trust & Savings Co. 161 So. 793, in no way affects the provisions of the Act inquired about.

Very truly yours,
A. A. CARMICHAEL,
Attorney General.

October 15, 1935.

Hon. M. W. Forman,
Judge of Probate, St. Clair County,
Ashville, Alabama.

Claims against the county which are required to be passed by the Commissioners Court or other like governing body must be presented for allowances and payment within twelve months or same are barred by the statute of limitations as set out in Section 228, Code of 1923.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of August 29, 1935, in which you request my opinion as follows:

"Mr. F. M. Morris, former Tax Assessor of St. Clair County has filed a claim against St. Clair County in the amount of $40.00. This claim of $40.00 covers a period of eight years in the amount of $5.00 per year, which represents the premium on his bond. He has paid this personally, not knowing the county could pay the bond of county officials.

"Please advise, on account of the lapse of time in filing this claim, whether the county can legally pay this claim."

If any or all of these payments have run for more than twelve months before being presented to the Court of County Commissioners or Board of Revenue or other like governing body, for payment, they would be barred by the statute of limitations of twelve months under Section 228, Code of Alabama, 1923, which is as follows:

"Claims barred if not presented.—All claims against counties must be presented for allowance within twelve months after the time they accrue, or become payable, or the same are barred, unless it be a claim due to a minor, or to a lunatic, who may present such claim within twelve months after the removal of such disability."

Biennial Report of the Attorney General, 1930-32, page 24; Biennial Report of the Attorney General, 1930-32, page 899. State ex rel. City of Mobile vs. Board of R. & R. Commissioners of Mobile County, 180 Ala. 514.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 15, 1935.

Hon. I. T. Quinn,
Commissioner of Game and Fisheries,
Capitol.

Game and Fish—Associate members of Oyster Commission entitled to actual expenses incurred while performing official duties.

Opinion by Assistant Attorney General Screws.

Dear Sirs:

This is to acknowledge receipt of a letter of September 4, 1935, signed by the associate members of the Oyster Commission, in which the following inquiry is presented:

"Are the associate members of the Alabama Oyster Commission limited to and bound by the terms of the McGowin Act (H. B. No. 6, p. 81, Special Session, 1933, and approved March 23, 1933) relative to their actual (all) expenses while in and about performing their duties as members of said Commission?"

I am of the opinion that the inquiry should be answered in the negative. The Oyster Commission was created by H. B. 569, approved July 17, 1935. Section 2 of said Act provides in part as follows:

"* * * The associate members of the Commission shall not be entitled to compensation for their services, but shall be entitled to reimbursement for all expenses incurred in connection with the performance of their duties."

Section 26 of said Act provides as follows:

"Section 26. All laws or parts of laws inconsistent with or in conflict with any provision of this Act are hereby expressly repealed."

Act No. 87, H. B. 6, approved March 23, 1933 (Acts 1933, p. 81) provides as follows:

"Section 1. The maximum amount allowable to persons traveling in the service of the State of Alabama or any of its agencies or institutions for expenses other than actual expense of transportation shall be $3.00 per diem."

"Section 2. This Act shall become effective upon its passage.

"Approved March 23, 1933."

It will be seen from the above that Act No. 87, supra, is in conflict with the above quoted portion of Section 2 of the Act under consideration. Therefore, in my opinion, Act No. 87, supra, is repealed in so far as it affects the members of the Oyster Commission by virtue of the repealing clause of the Act creating said Commissions. (See Section 26, supra.).

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 15, 1935.

Hon. A. F. Lee,
Sheriff, Greene County,
Eutaw, Alabama.

Hunting fox on Sunday, though with dogs only, violation of Section 5539, Code of Alabama 1923.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your letter of September 6, 1935, in which you ask whether or not hunting fox on Sunday with dogs only, is a violation of Section 5539 of the Code of Alabama 1923.

In my opinion, one who engages in hunting fox on Sunday, though with dogs only, is guilty of a violation of Section 5539, Code of Alabama 1923. Section 5539, as pertinent, reads as follows:

"5539. Certain acts prohibited on Sunday; punishment.—Any person who compels his child, apprentice, or servant to perform any labor on Sunday, except the customary domestic duties of daily necessity or comfort, or works of charity; or **who engages in** shooting, **hunting**, gaming, card, domino playing, or racing on that day;"

It is to be noticed that "hunting" is the act prohibited, it being of no moment that dogs only are used in the perpetration of such act.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 15, 1935.

Hon. J. W. Brock,
Clerk and Register,
Circuit Court of Coffee County,
Elba, Alabama.

Clerk of the Circuit Court—form of statement and claim for ex officio fees.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion of recent date as follows:

"I hereby request your official opinion upon the following question:

"Section 7280 of the Code of 1923 provides for the Ex Officio fees of the Clerk of the Circuit Court and the determination thereof.

"Section 7282 provides how the same are paid, allowed and reduced by the Commissioners Court. In part it provides:

" 'Such statement must contain a detailed report of all services rendered, showing the charge made for each item, and if the Court of County Commissioners or other Court of like jurisdiction, finds said statement correct and the charges made reasonable, they shall draw a warrant for same.'

"As you know, Coffee County is a County in which the Circuit Court is held at two places and where the Clerk keeps an office, etc., at two places in the County.

"1. Please advise me in detail the items which I must show on my sworn statement or report, made to the Commissioner's Court, for the allowance of my Ex Officio fees; that is to say, for what items or services ex officio fees be allowed.

"2. Also, please advise in detail if each item must be itemized, as to the amount claimed, separately."

Your first inquiry may be answered generally by reference to the definition of ex officio claims. In Calhoun County vs. Watson, 152 Ala. 554, 44 So. 702, the Court in speaking to the question said that "no service rendered by a Circuit Clerk could be an ex officio charge unless it was for the performance of some duty required by law, and then only in case no fee was specified therefor, and upon the further condition that it could not be taxed as costs against any plaintiff or defendant."

An examination of the original record of the Supreme Court in the Watson case, supra, discloses that the Court approved as proper items for which the Circuit Clerk may make ex officio charge, the following:

Preparation of civil trial docket;
Docketing and setting cases thereon for trial;

Preparation and keeping of civil subpoena docket;
Preparation and keeping of civil fee books and keeping accounts therein;
Preparation of State trial docket and docketing and setting cases for trial;
Preparation and keeping State subpoena docket;
Preparation and keeping of State fee book and keeping accounts therein;
Preparation and keeping of execution docket;
Preparation and keeping of motion docket;
Issuing Jury venires;
Administering oaths to bailiffs, jurors and witnesses;
Issuing bailiffs certificates;
Issuing jurors certificates;
Making reports to the Governor;
Making reports to the Chief Justice of the Supreme Court.

The foregoing list of items is not all inclusive of the services of the Clerk for which ex officio compensation may be claimed. For example, issuance of subpoenas for witnesses to appear before the Grand Jury in cases where no indictment is returned (Biennial Report of Attorney General 1918-20, p. 630), and making and keeping direct and reverse indices to the books and records pertaining to the office, are items for which such compensation may be allowed. No doubt many other services which come within the definition laid down in the Watson case, supra, will readily occur to you.

Your second inquiry must be answered in the affirmative. Section 7282 of the Code of 1923, provides that the Clerk shall present to the Commissioners Court a sworn statement that he has performed all ex officio duties required of him; and that "such statement must contain a detailed report of all services rendered, showing the charges made for each item" * * * * *.

Very truly yours,
A. A. CARMICHAEL,
Attorney General.

October 15, 1935.

Hon. J. F. Gaillard,
Member, Board of Revenue of
Monroe County,
Perdue Hill, Alabama.

Commissioners Court—Duty to furnish office quarters and telephone service to the County Superintendent of Education.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion dated September 3rd, 1935, as follows:

"I, as member of the Monroe County (Alabama) Board of Revenue request a ruling as to whether our Board can legally authorize payments from the general Fund of the county for office rent, telephone rent and toll charges, enumeration of the educable children of the county, etc., for the County Superintendent of Education.

"What I want to know is, whether our Board can legally pay such bills from our General Fund, or if it is illegal for us to do so."

In my opinion, the rental of office quarters for the county Superintendent of Education is properly payable out of the General Fund of the County. Section 169 of the Alabama School Code of 1927, specifically provides that the county governing body "shall provide the County Superintendent of Education * * * with ample, convenient and comfortable office quarters."

Your inquiry as to telephone service and long distance tolls in connection with the operations of the County Superintendent of Education has heretofore been answered in the affirmative by this office in an opinicn to the Probate Judge of Clay County, rendered on June 1, 1928, copy of which I herewith enclose.

The question contained in your inquiry as to payment of the expenses of taking the school census has heretofore been answered by this office in an opinion addressed to the Judge of Probate of Elmore County, wherein it was held that such expenses must be paid out of the County treasury and not out of school funds.—See Biennial Report of Attorney General 1932-1934, p. 622.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 15, 1935.

Hon. C. W. Gantt,
Clerk, Circuit Court of Elmore County,
Wetumpka, Alabama.

Clerks not authorized to resubpoena witnesses to subsequent sessions of court where case was not disposed of prior to passage of Act No. 575, General Acts, 1931, page 668.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of September 4, 1935, which is as follows:

"Please advise me if after the adoption of the 1923 Code, were sheriffs and Circuit Clerks entitled to fees from any fund for issuing and serving alias subpoenas from **'Term to Term'**, and not from **'Session to Session'**, or **'Day to Day'**, giving consideration to the following facts:

"Section 6675 of 1923 Code defines 'Session' as being **part** of a term.

"The 1907 Code, Sections 7881 and 7883, required witnesses to attend from **'Term to Term' without being resubpoenaed,** but the 1923 Code requires attendance from **'Day to Day'** or from **'Session to Session.'** (Sections 5619, 5620, and 5621).

"In O'Rear vs. Long 186 Ala. 599, 65 So. 134, the Supreme Court ruled Clerks not entitled to pay for issuing alias subpoenas from **'Term to Term'** which was the law at the time, (1914) but the 1923 Code revises **'Term to Term'** to read **'Session to Session'**, and **'Day to Day.'**

"The reading of the 1923 Code is reasonable, for it appears that it would be practically impossible to run courts from **'Term to Term'** without issu-

ing and serving alias subpoenas; for when cases are continued the court could not notify the witnesses on what day to appear in the new term, as no docket for that term could be made at the time.

"There is a question in my mind whether or not the Attorney General took into consideration the distinction between **'Term to Term'** and **'Session to Session'**, or **'Day to Day'** in a recent ruling of the Attorney General—1930-32, page 192."

I do not think that the distinction which you raise would have any material effect on the former opinion of the office.

The word "term" as used in Section 7881, Code of 1907, was changed to "session" in Section 5619, Code of Alabama, 1923. This change was necessary in view of the new division "session" which corresponds to "term" as used in the 1907 Code. I do not think the change was brought about in order to come without the operation of O'Rear v. Long, 186 Ala. 597, 65 So. 134. The mere fact that a new "term" may intervene between "sessions" does not, in my opinion, require that witnesses be resubpoenaed. Of course, this matter is now governed by Act No. 575, General Acts 1931, page 668.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 16, 1935.

Hon. H. W. Clayton,
Clerk, Circuit Court of Marshall County,
Guntersville, Alabama.

Local Act No. 544, H. B. 4, approved February 28, 1889, repealed by Section 4038 of the Code of Alabama, 1923.

Acts 1923, p. 127 held to apply to Local Acts of 1889, No. 544, H. B. 4, approved Feb. 28, 1889.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your request of August 31st, sent through your attorney, Hon. Claud D. Scruggs, requesting my opinion in substance as follows:

Section 3 of H. B. 308-Merrill, Acts 1923, p. 127, provides that no local law not included in the Code of 1923, though it may be of a general nature, shall be repealed by the adoption of the Code, when the local law affects or is applicable to only one county, one municipality or one political subdivision of the State.

Does Section 4038 of the Code of Alabama, 1923, repeal an Act of the Legislature applicable to Marshall, Blount and Cherokee Counties, since such Act provides for payment of fines and forfeitures in a medium other than money?

In reply I wish to advise that in my opinion the Act referred to by you relative to payment of fines and forfietures in a medium other than money, is repealed by Section 4038 of the Code of 1923, which provides in part as follows:

"All fines and forfeitures shall be paid in money."

I refer you to an opinion of the Attorney General rendered to Hon. Chas. W. Lee, State Comptroller, under date of August 7, 1935.

Section 3, Act of 1923, p. 127, provides as follows:

"Section 3. No Statute which applies or relates or which was intended to apply or relate to but one county, one municipality, or one other political subdivision of the State, though such statute might, strictly speaking, be classed as a general law, shall be repealed or affected in any manner by the adoption of this Code or the failure to incorporate it in the Code as a part thereof; but such statute shall remain unrepealed and be given the same force and effect as if it had been incorporated in the Code as a part thereof. Likewise, no statute applying to the revenue laws of this State, or to taxation, to schools, to education, to agriculture, to horticulture, or other industries, or to the game and fish department of the State, or relating to such subjects, shall be repealed or affected in any manner by the adoption of this Code, or by the failure to incorporate such statutes as a part thereof."

You will note that this Section limits its application to a statute that "applies or relates, or which was intended to apply or relate to **but one** county, **one** municipality or **one** other political subdivision of the State," the language here is unequivocal and limited to **but one** political subdivision regardless of whether the law in form be local or general.

The Local Act of 1889, No. 544, H. B. 4, approved February 28, 1889, referred to, relates to, and applies to Marshall, Blount and Cherokee Counties. The Act provides as follows:

"No. 544 AN ACT H. B. 4.

"Authorizing the payment of Fines and Forfeitures with certain claims in the counties of Cherokee, Blount and Marshall.

"Section 1. Be it enacted by the General Assembly of Alabama, that all Fines and Forfeitures in the counties of Cherokee, Blount and Marshall, (which have been had or assessed and not paid) or which may hereafter be had or assessed, may be discharged by payment in claims against the Fine and Forfeiture Fund of said counties, commonly known as State claims.

"2. Be it further enacted, that all laws and parts of laws in conflict with this Act, be and the same are hereby repealed.

"Approved February 28, 1889."

Each of these counties is a separate and distinct political subdivision.

It is my opinion, therefore, that Section 3 of the Acts of 1923, p. 127, does not save the Acts of 1889, supra from repeal by Section 4038 of the Code of 1923, supra.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 16, 1935.

Hon. L. C. Garrison,
Judge of Probate, Walker County,
Jasper, Alabama.

(1) Deed from trustee in Bankruptcy to private corporation requires deed filing tax, when offered for record.

(2) When such deed describes the payment of a certain amount over and above a certain mortgage or deed of trust assumed the amount of such mortgage is not deductible.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"There has just been filed in this office a deed by a trustee in bankruptcy covering certain real estate. The person filing the deed has the opinion that he should not pay the state deed filing tax.

"Will you please render an opinion by early mail, for which you have my thanks in advance.

"There is attached hereto copy of the deed, excepting description of the property and acknowledgement."

The deed which you enclose after overruling the petition for an adjudication of Bankruptcy states:

"Whereas, the said **George Collamore as Trustee** in bankruptcy of the estate of Manchester Coal Company, bankrupt, was duly authorized, after notice to the mortgage bondholders, lienors and creditors, by an order of George P. Bondurant, Referee in Bankruptcy, dated December 19th, 1934, to sell and convey the property hereinafter mentioned, at public auction, free and clear of liens except only the lien of that certain chattel deed of trust dated September 1, 1928, and filed for registration in Walker County, Alabama, September 28, 1928, and of record in Book 312, page 261, and the said sale having been held at Birmingham in the County of Jefferson, State of Alabama, on the 19th day of December, 1934, and having thereafter been confirmed by an order of George P. Bondurant, Referee in Bankruptcy, dated the 19th day of December 1934.

"Now, Therefore, know ye, that I, the said George Collamore, as Trustee in Bankruptcy of Manchester Coal Company, bankrupt, by virtue of the power and authority in me vested, as aforesaid, and in consideration of the sum of Forty-Five Thousand ($45,000.00) Dollars, to me in hand paid by the said Southern Coal Company, party of the second part, receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto the said Southern Coal Company its successors and assigns forever, all those certain tracts or parcels of land, with the buildings thereon standing situated in Walker County, Alabama, to-wit:"

The statute (Section 21½, Acts 1927, p. 139) provides that "no deed . . . . **shall be received for record** unless the following privilege or license tax shall have been paid upon such instrument before the same is offered for record, to-wit: upon all such instruments which are executed to convey real or personal property situated in the State of the **value** etc.

It appears therefore by the express terms of the statute all deeds offered for record are due the tax. In the present case the Southern Coal Company is the grantee and it or someone for it, files the instrument. It is therefore taxable.

As I read the conveyance, the $45,000.00 paid, is in excess of the chattel deed of trust described, which is assumed and there would be no deduction on account of it, the full value of the property being the $45,000.00 plus the indebtedness secured by such deed of trust.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 16, 1935.

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

(1) Lamar County—Local law approved March 2, 1901 (Local Acts 1901, p. 1963) superseded by Sections 3741 and 7287, Code of Alabama, 1923.

(2) Lamar County—Local Act approved September 20, 1932, violates Section 96 of the Constitution, and, therefore, unconstitutional.

(3) Lamar County—Local Act approved August 7, 1907 (Local Acts 1907, p. 808) constitutional.

(4) Lamar County—Local Act 1923, p. 19, as amended, providing for levy, collection and disposition of a special county vehicle tax not repealed by Local Acts 1931, p. 270.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of August 30, 1935, which reads as follows:

"1 The Local law for Lamar County approved March 2, 1901 (Local Acts 1900-1901, page 1963) conflicts with the General Law (Sections 3741 7287, Code of 1923), on the same subject.

"Bearing in mind that this local law was enacted before the adoption of the Constitution of 1901—with particular reference to Section 96, subsection 24 of 104 and 110, is the above mentioned local law or general law now in effect in Lamar County?

"2. The Local Acts of Lamar County, approved September 20, 1932 (Local Acts 1932, page 12) conflicts with the General Law on the same subject, (Section 3760—Code of 1923). Is this local law constitutional or does it violate Sections 96, subsection 24 of 104, 110 or any other Section of the Constitution of 1901?

"3. Is the Local Act for Lamar County, approved August 7th, 1907, (Local Acts of 1907—page 808) constitutional, in view of the provisions of Section 3739 of the Code of 1923 and the above mentioned sections of the Constitution of 1901?

"4. Did Section 17 of the Local Act for Lamar County, approved July 23, 1931 (Local Acts 1931—page 270) repeal the provisions of the Local Act for the same County, approved February 10, 1923, (Local Acts 1923—page 19) as amended by Local Act approved September 26, 1923, (Local Acts 1923, page 280) for the levy, collection and disposition of a special county vehicle tax?"

It is my opinion that your first inquiry should be answered in the negative. This office in an opinion addressed to your department on August 7, 1935, ruled in an analogous case that the general law had superseded the local statute with which it conflicted.

Your second inquiry as to whether the Local Act for Lamar County, approved September 20, 1932 (Local Acts, 1932, p. 12) is constitutional, must be answered in the negative. Section 3760, Code of 1923, is as follows:

"3760. Regular jurors' fees; proved by oath of juror; certificate of clerk.—Regular jurors, grand and petit, are entitled to three dollars for each day's services, five cents for each mile traveled in going to and returning from court, and ferriage and toll, to be proved by the oath of the juror before the clerk of the court, whose duty it is to give each juror a certificate, stating therein the number of days he has served, the number of miles he has traveled, the amount of ferriage and toll he has paid, and the amount of compensation to which he is entitled; which certificate shall be receivable in payment of county taxes, and other county dues, and payable out of the county treasury."

Local Acts 1932, p. 12, conflicts with the above quoted section in that it provides $2.00 per day for each day's service and three cents for each mile traveled in going to and returning from court.

Section 96 of the Alabama Constitution of 1901, provides as follows:

"96. The legislature shall not enact any law not applicable to all the counties in the state, regulating costs and charges of courts, or fees, commissions or allowances of public officers."

It seems not open to reasonable doubt that jurors' fees are among the "costs and charges" of courts named in the above section. Accordingly, it is my opinion that the Local Act approved September 20, 1932 (Local Acts 1932, p. 12) is directly in violation of Section 96, supra, and, therefore, unconstitutional.—(See also Biennial Report Attorney General 1928-1930, p. 427).

Your third inquiry must be answered in the affirmative. The Local Act, approved August 7, 1907, (Local Acts 1907, p. 808) reads as follows:

"Be it enacted by the legislature of Alabama, That from and after the passage of this act the clerk of the circuit court of Lamar County, Alabama, shall be allowed an assistant or deputy clerk, during the terms of the circuit court, who shall receive for each day's service, as such assistant clerk two dollars per day, to be paid out of the general fund of said county, as court bailiffs are paid."

The Supreme Court of Alabama, basing its opinion upon the case of Commissioners Court of Winston County v. Haney, 218 Ala. 166, 118 So. 238, denying a writ of certiorari in Commissioners Court of Winston County v. Haney, 22 Ala. App. 571, 118 So. 238, has held constitutional a Local Act providing an additional deputy sheriff for Coffee County—**Court of County Commissioners v. Lightner,** 141 So. 908.

The Court speaking to the question stated:

"The argument that the act is violative of sections 96, 281, 68 and subdivision 24 of section 104 of our state Constitution is rested upon the theory that the provision for such deputy results to the financial advantage of the sheriff, though indirectly, and thereby increases his compensation during his term, citing Vaughan v. State, 212 Ala. 461, 103 So. 38; Jackson v. Sherrod, 27 Ala. 245, 92 So. 481.

"We are of the opinion, however, this insistence is answered by the ruling of this court in Commissioners' Court of Winston County v. Haney, 218 Ala. 166, 118 So. 238, denying a writ of certiorari in Commissioners' Court of Winston County v. Haney, 22 Ala. App. 571, 118 So. 237, wherein a local act of Winston County very similar to that here involved was sustained as against constitutional objections interposed. The Court of Appeals rested its decision upon the reasoning of this court in State ex rel. Day v. Bowles, 217 Ala. 458, 116 So. 662, to which we think may be properly added the case of State v. Henry (Ala. Sup.) 139 So. 278, 279."

In my opinion your query presents an analogous situation and must be answered in a like manner.

Your fourth inquiry must receive a negative reply.

The Act approved February 10, 1923 (Local Acts 1923, p. 19) as amended by Local Act approved September 26, 1923 (Local Acts 1923, p. 280) purports to "provide for a better system of public roads for the County of Lamar, State of Alabama, and to provide ways and means by which said system may be maintained and effected, **and to provide vehicle license and commutation fees and their manner of collection and expenditure.**" The later Act (Local Acts 1931, p. 270) is entitled "An Act to provide for a better system of roads in Lamar County, State of Alabama, and to provide ways and means by which said system may be maintained and effected and to provide penalties for the violation of any provision of said Act." The general rule as stated in Black (Interpretation of Laws, p. 112) is that:

"Every new statute should be construed in connection with those already existing in relation to the same subject-matter, and all should be made to harmonize and stand together, if that can be done by any fair and reasonable interpretation, and if the new act does not expressly declare the repeal of an earlier statute, it will not be construed as effecting such repeal unless there is such a repugnancy or conflict between the provisions of the two acts as to show that they could not have been designated to remain equally in force. * * *"

Accordingly, as no irreconcilable repugnancy or intention to supercede the prior Act is apparent here, it is my opinion that the provision for the levy, collection and disposition of a special county vehicle tax was not repealed by Local Acts 1931, p. 270.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 17, 1935.

Hon. Chas. E. McCall,
State Auditor,
The Capitol.

The offices of Register in Chancery and Registrar of Voters are both offices of profit and the holding of both offices at the same time by one person is prohibited by Section 280 of the Constitution.

Opinion by Assistant Attorney General Bibb.

Dear Sir:

I wish to acknowledge receipt of your letter of September 19, 1935, asking my opinion as follows:

"Please advice whether or not a person who has been appointed Register in Chancery for a certain County by the Judge of the Circuit Court can also be appointed Registrar of Voters for the same county?

"Please refer to Constitution Sections 163, 165, 166 and 280, and Code 1923, Vol. 1, page 593, Section 379."

The offices of Register in Chancery and of Registrar of Voters are both offices of profit within the meaning of Section 280 of the Constitution and therefore may not both be held by the same person at the same time. While a person who has been appointed and had qualified for the position of Register in Chancery would not be rendered thereby ineligible to appointment as Registrar of Voters in his county, his qualification for and acceptance of the latter office would vacate the former. Opinions of the Attorney General 1926-1928, p. 105.

I am not unmindful of the language of Section 186 of the Constitution which provides in part:

" * * * First.—Registration shall be conducted in each county by a board of reputable and suitable persons resident **in the county, who shall not hold any elective office during their term,** etc."

but I do not think this provision in any way supersedes the prohibition of Section 280 in so far as Registrars are concerned. In my opinion, the prohibition contained in Section 186 was designed to safeguard further the bona fides of the list of qualified voters by making the Registrars charged with the duty of determining the qualifications of electors, ineligible to any office, elective at the hands of those voters, during their terms of office as such registrars. This question is further clarified by Section 2575 (7), which is as follows:

"2575. The persons who are ineligible to and disqualified for holding office under the authority of this State are * * * * "(7) No person holding an office of profit under the United States, shall during his continuance in such office, hold any office of profit under this State; **nor shall any persons hold two offices of profit at one and the same time under this state, except notaries public."**

I trust that this answers your inquiry.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 17, 1935.

Hon. Saxon P. Poyner,
Judge of Probate,
Houston County,
Dothan, Alabama.

A person owning an apartment house containing five apartments which are separately rented and has three additional unoccupied rooms used by transients is not liable for hotel license levied by Schedule 74 of the Revenue Act of 1935.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 27, 1935, in which you state:

"Kindly interpret for me Schedule No. 74 of the Revenue Code effective October 1, 1935, which provides a License on a Public Inn or Lodging House. Does the number of rooms referred to mean both rooms occupied by transients? For instance, a person owns a house on the Highway occupied by transients? For instance, a persons a house on the Highway containing in all eight rooms four of which are occupied by members of the family as their private rooms, the other four being rented to transients. Would this be a Public Inn of four rooms or eight rooms? Another instance, a person owns an apartment house containing five apartments consisting of three rooms each in addition to the personal or private quarters. Three additional unoccupied rooms are used by transients. Can the private apartments rented annually and occupied by private families be construed under this Schedule as rooms to be computed for the levy of the license?

"An extreme case is a home containing ten rooms nine of which are used by members of the family as a private residence and one of which is rented to transients. Is this Schedule to be construed to mean that this is a Public Inn or Lodging House subject to a license tax on the entire ten rooms?

"I would like to have this opinion on this as soon as possible as there is quite a difference of opinion with reference to same."

In reply I beg to enclose copy of opinion rendered to Hon. R. E. Williams, Judge of Probate of Marshall County under date of September 4, 1935, construing the Act of 1927 levying a license on hotels. The chief difference between the Act of 1927 and that of 1935 is that the limitation of fifteen rooms used by transient guests is reduced to five rooms. The opinion enclosed will therefore answer all of your questions except that relating to the apartment house.

In my judgment, under the facts set out by you, the person operating the apartment house in the manner detailed would not be liable for the hotel license levied by Schedule 74 of the Revenue Act of 1935.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 17, 1935.

Hon. C. B. Gullatt, Jr.,
Judge of Probate,
Russell County,
Seale, Alabama.

An individual engaged in the manufacture and sale of lumber operating a commissary in connection therewith is liable for store license on such commissary.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 13th, in which you state:

"Please advise me if a license tax or open door license is chargeable against a corporation or individual engaged in the manufacture and sale of lumber, other than the regular license collectible against manufacturers and dealers in lumber, where the corporation operates a commissary in connection with the lumber business.

"This corporation carries feed for the mules used in connection with the lumber business, belts and other saw mill supplies, furnished to the agents operating the mills of the corporation, but does not sell to the general public.

"Feed and other mill supplies are charged against the account of the different agents and sub-contractors.

"The question is, must the corporation in addition to paying its license for operating a general lumber business, pay also an additional license in the way of an open door license for operating its commissary."

In reply, I beg to advise that it appears that this Company is selling goods, wares and merchandise other than lumber for which it is specially licensed and, therefore, in my opinion, would be liable for the store license commonly called the "chain store license". I presume that is what you mean by the "open door license".

Of course, if the Company sells other products for which a separate license is required, it would be liable for such license.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 17, 1935.

Hon. N. P. Tompkins,
Judge of Probate,
Colbert County,
Tuscumbia, Alabama.

1. Under provisions of Section 271 of the Revenue Act of 1935, the owner or anyone interested may redeem a portion of his property which has been sold for taxes.

2. The provision for redemption on partial payment plan applies to all sales to the State made prior to January 1, 1935.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 13th, in which you state:

"1. It seems that the new revenue act approved July 10, 1935, provides that the owner of real estate sold for taxes may redeem any part of such real estate included in the assessment without redeeming all the property assessed. Please advise whether I am correct in this assumption and also whether this partial redemption provision applies to sales made prior to this act.

"2. It appears that the rate of interest in the new act is Six per cent. Please advise whether this rate of interest applies to redemption of property heretofore sold for taxes before this act became effective. Also please state whether the six per cent interest should be charged on the taxes for which the property sold as well as on subsequent taxes.

"3. I note a provision in the new act for the redemption of real estate by partial payments, please advise whether this applies to property sold to the state in 1932 or other years prior to the new act.

"It is very important that I have a ruling on these questions before October 1, as I have had inquiries from parties desiring to redeem."

In reply to question 1, I advise that Section 271 of the Revenue Act of 1935 provides as follows:

"Section 271. When distinct lots or parcels of land have been included in one assessment and sold for taxes under one decree, any person including the owner, whose interest in one or more of such lots or parcels is such as to entitle him to redeem, may redeem the lots or parcels in which he has such interest, without redeeming all of said property, provided that any owners desiring to redeem any one or more parcels of land must also pay all tax on personal property assessed against him in said assessment, together with all cost of court and advertising fees."

This language is so explicit that it is a clear authorization for partial redemptions. There being no limitation on the time, I assume that it applies to any property sold to the State and which is still in the possession of the State.

The Section covering question 2 has been amended and I have not been able to secure this amendment as it was passed on the last day. It is my information that the expression used is the prevailing rate rather than six per cent, and presumably means the rate prevailing at the time of the sale. You will, however, not consider the comment as to question 2 as an official opinion.

Answering question 3, I advise that the statute specifically makes the partial payment redemption plan applicable to all property sold to the State prior to January 1, 1935 (Sec. 291).

Please note, however, that this Act is not effective until October 1, 1935.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 17, 1935.

Hon. Hugh White, President,
Alabama Public Service Commission,
Montgomery, Alabama.

Attention Mr. Black.

Motor Vehicles—a farmer occasionally transporting farm produce not raised by him from field to market not a "contract carrier" within the contemplation of Acts 1932, p. 178.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion dated September 7, 1935 as follows:

"We desire an official expression from you as to whether or not the motor-carrier operation below is subject to an Act of the Legislature approved October 28, 1932 (H. B. 113).

"A farmer, using a truck which he owns and operates in connection with his farm, will transport peanuts from the field to an oil mill, some of the peanuts being owned by the operator of the truck, while others are owned by other growers. The movement is a seasonal one and we are advised will be completed in a period of approximately 30 to 60 days. The truck to be employed in this movement will not weigh in excess of 4500 pounds and the load to be carried thereon will not exceed 4500 pounds.

"It seems under Section 3 of the Act referred to the operator of this truck will be exempt from the payment of mileage taxes and from the filing of a mileage tax bond. We desire to know if this operator is exempt from the other provisions of the Act referred to by reason of the provisions of Section 1 thereof, particularly Division 3 of Section 1."

It is assumed that the operation described in your request is an occasional one by a person not regularly engaged in the transportation business. In my opinion, the operation does not come within the provisions of the Alabama Motor Carrier Act of 1932. Subsection d (3) of Section 1 of Acts 1932, page 178 (the Alabama Motor Carrier Act of 1932) limits the definition therein contained of "contract carrier" as follows:

"(d) 'Contract Carrier' means any operator of a motor vehicle who engages in the business of furnishing transportation of persons or property for hire for a particular person or particular persons under a special contract or special contracts, and not for the public. 'Contract Carrier' shall not be construed to mean or include: 3. Any person, firm, association or corporation who does not regularly engage in the transportation business, but occasionally transports persons or the property of others for hire."

This exception applies to a farmer who only occasionally transports farm products for his neighbors as outlined in your request for opinion.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 17, 1935.

Hon. Saxon P. Poyner,
Judge of Probate,
Dothan, Houston County, Alabama.

Licenses—"Potato Chips" are not candy or peanuts within the contemplation of the exemption to Schedule 147 of the Revenue Act of 1935.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of September 13, 1935, which is as follows:

"Kindly refer to Schedule 147 of the recently enacted Revenue Code at sub-head "E" which defines a wholesale dealer selling from place to place and making delivery at the same time and also to the exemptions under sub-head "K" part of which reads as follows: 'nor shall this Schedule apply to those selling fish, shrimp, crabs or other sea foods, candy and peanuts'.

'Potato chips is a confection the same as candy and peanuts. Please advise whether you will construe potato chips in this category with candy and peanuts exempt under this sub-head."

I am of the opinion that your inquiry should be answered in the negative. The exemption in question contained in Schedule 147 of the Revenue Act of 1935, is as follows:

"Nor shall this schedule apply to those selling fish, shrimp, crabs or other sea-foods, candy and peanuts."

In my judgment, "potato chips" could not be considered as candy or peanuts within the contemplation of the above quoted exemption. Exemptions are strictly construed. Moreover, the exempted products are specifically enumerated, and this shows the legislative intent to exempt those and only those named.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 17, 1935

Hon. R. H. McAnelly,
Judge of Probate,
Jackson County,
Scottsboro, Alabama.

Under Schedule 146 of the 1935 Revenue Act rolling stores are required to pay one State license graduated according to the number of motor vehicles used.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 11, 1935, in which you state:

"I desire your opinion on a question that has already come to my attention several times, and will continue to be put up to me on and after

October 1st., viz: Will persons having taken out state and county license for rolling stores in one county be subject to state license in another should they operate in two or more counties, or any other privilege license require state license for each county operated in. I have tried to find the answer to this question in the new revenue bill, but cannot do so. Please let me have your opinion before October 1st."

In reply, I advise that it is provided in part by Schedule 146 that each person, etc. shall pay **to the State** in order to engage in such business the following privilege license. Then follows a license graduated according to the number of motor vehicles used. Following that, there is this provision:

"In addition to the above, there is levied a license for each county in which said business is conducted of 50% of the amounts levied as a State license."

It seems that the specific declaration that it shall pay to the State the amounts required, and the amounts being on a graduated scale, that the statute contemplates only one State license graduated according to the number of motor vehicles used. This is emphasized, I think, by the specific declaration that there shall be levied a license for each county of 50% of the amounts levied as a State license.

While the statute is not entirely clear, I am of the opinion that this was the intent of the Legislature. Otherwise, it would be difficult to determine the proper license when based on a graduated scale. It might be possible for the same Company to operate a separate vehicle in each county and thus avoid the payment of the graduated license. It is very clear that the Legislature intended that the license should increase in proportion to the number of vehicles operated by the same person and in doing so, had reference to the number of vehicles rather than the particular county in which they are used. I therefore hold that there is only one State license required under said Schedule which license must be graduated according to the number of vehicles used.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 18, 1935.

Hon. W. H. Price, Chairman,
Board of Registrars,
Madison County,
Huntsville, Alabama.

Notice of time and place for registering voters is paid for by State under Section 386, Code of Alabama, 1923.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of September 9, 1935, in which you request my opinion as follows:

"How do the Registrars collect for publishing notice of time and place of registration of voters?"

I call your attention to Section 386, Code of Alabama, 1923, which is as follows:

'Section 386. Registration books, forms and blanks furnished by the secretary of state.—The secretary of state shall, at the expense of the state, have prepared and furnished to the registrars and judges of probate in the several counties a sufficient number of registration books and blank forms of oath, certificates of registration, and of notices required to be given by registrars. The cost of the publication of the notices required to be given by the registrars shall be paid by the state, the bills therefor to be rendered to the secretary of state and approved by him."

I do not find where this Section has been amended unless it was amended by the Legislature of 1935, and as these laws have not yet been compiled, I am unable to advise you as to this, but I feel reasonably certain that this particular section has not been repealed or amended. You will see from the above quoted section that the counties do not pay for the notice of time and place of registration, but this is paid for by the State, on the approval of the Secretary of State.

Biennial Report of Attorney General, 1930-1932, page 464.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 18, 1935.

Hon. J. M. Gauntt,
Clerk, Circuit Court,
Tallapoosa County,
Dadeville, Alabama

1. No seizure fee is provided for the seizure of liquor where the amount seized is less than one gallon.

2. Sheriff not entitled to mileage for transporting whiskey except when the same is seized under search warrant.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of September 14, 1935 in which you request my opinion as follows:

"I will appreciate your advising me at once what the law is covering the following questions:

"1st. What amount of seizure fee is allowed to the Sheriff when less than one gallon of whiskey is captured by the officers?

"2nd. When is the sheriff allowed mileage for transporting whiskey to the jail after the capture of illegal liquors?"

Answering your first inquiry, I call your attention to Section 4654, Code of Alabama 1923, which is as follows:

"4634. Fees to be taxes for arrest and seizures in prohibition cases.—When an officer arrests any person in possession of an unlawful quantity or quantities of prohibited liquors, or of such liquors under conditions prohibited by law, then on the conviction of such party of a violation of a city ordinance or state law, whether in the recorder's court, or state court possessing jurisdiction, a fee for making the seizure of the liquors shall be taxed up against the defendant, and paid to such officer as a part of

the cost of the case as follows: If a seizure is made of not less than one gallon, nor more than five gallons of such liquors, the fee shall be three dollars; if the seizure be of more than five gallons, and less than twenty gallons, the fee shall be five dollars; and if more than twenty gallons, be seized, the fee shall be ten dollars."

You will note this section says, among other things, "If a seizure is made of not less than one gallon, nor more than five gallons of such liquor, the fee shall be three dollars"; Therefore, I find no fee provided for the seizure of liquor in less quantity than one gallon.

Answering your second inquiry, I know of no allowance for mileage for transporting liquors seized except where the liquor is seized under search warrant. Biennial Report 1926-1928, p. 282.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 18, 1935.

Hon. J. C. Kellett,
Judge of Probate,
DeKalb County,
Fort Payne, Alabama.

Gas Tax—Use of on Federal Aid Relief Projects.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of September 14, 1935, which is as follows:

"As Federal Aid Relief Projects, DeKalb County has been doing work on county roads and bridges, and in carrying on this work two timekeepers were employed by the Government official who was in charge of the work here, each of whom was to be paid $39.00 per month from Federal Funds. The Court of County Commissioners agreed to supplement this pay by the payment of $20.00 per month to each of the timekeepers in order to pay them what their work was reasonably worth, including use of their automobiles in going to the several places each day while the projects were being carried on.

"I should like to have you advise me whether or not the county may supplement the pay of the timekeepers as outlined above, and if so, whether such payment should be made from the gas tax fund or the general funds of the county."

I am of the opinion that your inquiry should be answered in the affirmative.

The position taken by me in this matter, however, is based on the statement set out in your letter to the effect that the employees are performing duties directly incident to or connected with the construction or maintenance of the public roads and bridges of your county.

I refer you to an opinion rendered by this office on July 12, 1933, to the Probate Judge of Coffee County, wherein it was held:

"Gas tax funds may be appropriated to match R. F. C. funds provided that same are used exclusively in strict compliance with the authority authorizing the expenditure of the gas tax fund, viz: for the construction and maintenance of public roads and bridges in the county."

Biennial Report of Attorney General 1932-1934, P. 285.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 18, 1935.

Hon. Eugene H. Hawkins,
Judge of Probate, Jefferson County,
Birmingham, Alabama.

Act. No. 331, approved Sept. 2, 1935, does not repeal or affect H. B. 880 (Acts 1931, p. 522) which created the office of the Commissioner of Licenses of Jefferson County; such Commissioner of Licenses should collect the licenses levied by said Act. No. 331.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 7th in which you state:

"Please advise whether the Probate Judge or the License Commissioner of Jefferson County shall issue the drivers' licenses provided for by House Bill No. 545, approved by the Governor, September 2, 1935. I refer you to that bill and to act of the Legislature of 1931, page 522, approved July 16, 1931, and specifically to Section 6 of said Act."

In reply, I beg to advise that in my opinion Act. No. 331, H. B. 545, approved Sept. 2, 1935, providing for a driver's license does not affect or repeal the Act of the Legislature of 1931, appearing at page 522, approved July 16, 1931, and that it is the duty of the Commissioner of Licenses of Jefferson County to collect the drivers' licenses in the same manner that he collects other licenses.

Section 6 of said Act provides:

"Section 6. That it shall be the duty of the Commissioner of Licenses in their respective counties to collect and issue all licenses for exercising any right or privileges for which a license is required, marriage licenses, hunting licenses, chauffeur licenses, licenses for motor vehicles and any or all other licenses which are now or which may hereafter be required by law to be paid to the State of Alabama, and/or the counties thereof."

Of course, the provision "which may hereafter be required by law," is not binding on the Legislature, yet the Act of 1931 is a general act with local application and is such a special act, as in my opinion, is not repealed by said Act No. 331.

See opinion to Eugene B. Henry, Commissioner of Licenses, Jefferson County, dated January 12, 1933.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 18, 1935.

Hon. J. E. Bacon,
Land Appraiser, Housing Division,
Federal Emergency Administration of Public Works,
603 Chamber of Commerce Building,
Birmingham, Alabama.

No privilege tax required to be collected for recording deed wherein United States of America or instrumentality thereof is grantee.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of September 26, 1935, which is as follows:

"The United States Government has entered into binding contracts to purchase the entire Blocks numbered 16, 17, 18, 19, 33 and 34, in the Survey of North Smithfield, situated in the City of Birmingham, Jefferson County, Alabama; and the deal will be closed about October 1, 1935.

"There will be between 92 and 97 separate deeds on the various parcels in these blocks, all conveying title to the United States Government. The Department in Washington has asked me to procure a ruling from you to present to the Judge of Probate at the time of offering these deeds for record in Jefferson County, Alabama, to the effect that these deeds will be exempt from state deed tax.

"You are no doubt familiar with the fact that a similar ruling has already been issued with respect to mortgages executed to the Home Owners' Loan Corporation, in that such mortgages are held to be exempt from state mortgage tax.

"This matter has become urgent due to the fact that the deeds must be delivered and filed about October 1, 1935, to enable the completion of the Birmingham Slum Clearance Project within the time provided by the last executive order."

Under the decision of the Supreme Court of the United States in the case of Federal Land Bank of New Orleans v. Crossland, Judge of Probate, 261 U. S. 374, a deed, such as described in your letter as above quoted, cannot be subjected to a State filing tax.

This office in an opinion rendered April 2, 1934 (Biennial Report of Attorney General, 1932-1934, p. 544) has ruled on a similar question, holding that no privilege tax could be required for recording of mortgage made payable to Home Owners' Loan Corporation.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 18, 1935.

Hon. J. M. Cochran,
Tax Assessor, Marshall County,
Guntersville, Alabama.

1. When a truck was used exclusively for transferring children to and from school for the year October 1, 1934, through September 30, 1935 and through May, 1935, it was not liable for license tax for ad valorem tax.

2. When the purchaser of such truck who proposed to use it for other purposes applies for tag in August, 1935, the assessor should give him a certificate showing no ad valorem tax due for the preceding year.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of August 31, in which you state:

"I am asking an opinion on the following:

"'A truck bought new July 15, 1933, used as a school bus until May, 1935 for which no tag was ever bought therefore no tax was ever paid. This truck was turned back to the dealer May, 1935. A second purchaser buys this truck August, 1935 makes application for a tag will the second purchaser be due a tax on said truck? Will the value be as other motor vehicles although it has been used as a school bus where no tag has been required?'"

In reply, I advise that Section 16, Acts 1927, page 139, provides in part "that no license shall be issued to operate a motor vehicle on the public highways of this State, nor shall any transfer be made by the Probate Judge as provided under this Act until the ad valorem tax on such vehicle shall have been paid in the County for the preceding year."

You state that the truck has been "used as a school bus". You do not state that it has been "used exclusively for transferring children to and from school".

Assuming though that such was the case, for if not there would have been no exemption from license tag, it is my judgment that there should be no ad valorem tax due, at the time to-wit: August 1935 when the license tag is applied for.

By the above quoted statute, ad valorem taxes on motor vehicles while assessed at the time the tag is applied for, are assessable and the tax is due as of the "preceding year". Therefore, the status of the motor vehicle for such preceding year will control. Admitting the truck was used exclusively for school purposes during the tax year preceding, to-wit, October 1, 1934 through September 30, 1935, it was exempt from ad valorem tax.

You would, therefore, if satisfied as to the fact of such exclusive use, be authorized to issue a certificate showing that no tax was due for such preceding year.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 18, 1935.

Hon. R. H. McAnelly,
Probate Judge, Jackson County,
Scottsboro, Alabama.

Claims against counties must be filed within twelve months.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of September 12, 1935, which is as follows:

"Sheriff M L. Wann of Jackson County was killed about May 1, 1932. Mrs. M. L. Wann, his widow, was appointed administratrix of his estate. On May 4, 1934, Mrs. Wann as administratrix of the M. L. Wann estate filed a claim against Jackson County for $200.00, M. L. Wann's ex officio salary for the months of January, February, March and April, 1932. The Commissioners' Court of Jackson County thinks it is a just debt, and on account of her worry over her husband's death and the escape of the murderer she might have waited longer than the law allowed her to make the claim. The Court wants to know if it will be legal to pay this as they consider it a just and honest debt."

I am of the opinion that your inquiry must be answered in the negative. I am herewith enclosing an opinion rendered by this office on April 8, 1935, to the Hon. G. H. Howard, Probate Judge of Elmore County, which opinion deals with the question asked by you. I also refer you to Biennial Report of Attorney General 1932-1934, pp. 130 and 632; Biennial Report of Attorney General 1928-1930, p. 789.

Section 228, Code of Alabama, 1923, reads as follows:

"All claims against counties must be presented for allowance within twelve months after the time they accrue, or become payable, or the same are barred, unless it be a claim due to a minor, or to a lunatic, who may present such claim within twelve months after the removal of such disability.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 18, 1935.

Hon. Page S. Bunker,
State Forester,
Capitol.

Forestry Department—Surplus funds, collected under Section 1005, Code of 1923, as amended by Act. No. 23, House Bill 81, approved February 5, 1935, at the end of fiscal year revert to the credit of said special fund.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of September 26, 1935, which is as follows:

"Section 1005 of the Code of Alabama of 1923 provides for the allocation of certain specified receipts as the State Forestry Fund. This commonly has been referred to as a 'special fund.'

"Section 22 of the Budget and Financial Control act approved September 27, 1932, (General Acts of Alabama, Extra Session, 1932, page 35, No. 37) provides that 'All unincumbered balances * * * shall revert to the

State Treasury at the end of each fiscal year of a given quadrennium and to the credit of the general fund or **special funds** from which the * * * appropriations were made;' * * *

"Your opinion is requested as to whether the State Forestry Fund comprises a special fund as contemplated in Section 22. If so, your opinion is also requested as to whether balance of the State Forestry Fund at the close of any fiscal year reverts to the credit of same fund at the beginning of the ensuing fiscal year and becomes available for the use of the Commission in addition to the receipts accruing to such special fund during the new fiscal year."

I am of the opinion that your first inquiry should be answered in the affirmative.

This office has heretofore ruled that under Sections 21 and 22 of the so-called Budget and Financial Control Act (Acts 1923, p. 35) special funds or trust funds are kept inviolate. If there be any surplus in a special fund at the end of the fiscal year, it reverts to the State Treasury to the **credit of said special fund.—Opinion to Commissioner of Game and Fisheries on August 5, 1935.**

The question then presents itself as to wehther or not the funds derived under Section 1005, Code of 1923, as amended by Act. No. 23, House Bill 81, approved February 5, 1935, is a special fund within the contemplation of the Budget Act. Said section provides as follows:

"Section 1003. State forestry fund; what constitutes. All occupation license, or privilege taxes imposed by the state for engaging in any business dealing with timber, or timber products, but not the county's share or part of such taxes shall be separately reported by the officials collecting the same, and when paid into the treasury shall be kept in a separate fund which shall be known as the state forestry fund, and which shall be used for no other purpose than for the administration of this article, and the payment of the appropriations herein made. All fines and forfeitures arising under the provisions of this article shall likewise be paid into said state forestry fund. All moneys going into said fund are appropriated to said state forestry commission for the purpose of administering this article."

The 1935 amendment merely changed said section by inserting the following before the last two sentences:

"* * * and which, in view of the emergency character of various of the functions prescribed in this Article, shall not revert, as to unexpended balances, at the close of any fiscal year, but shall remain in said fund to enable the Commission to meet unexpected fire hazards and other emergencies incidental to carrying out the provisions of this Article. * * *"

In my opinion the fund in question is unquestionably a special fund within the contemplation of the Budget Act. The 1935 amendment further strengthens the argument that said fund does not revert to the general fund at the end of the fiscal year but reverts to said special fund.

Your first inquiry having been answered in the affirmative, it necessarily follows that your second inquiry should also be answered in the affirmative.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 18, 1935.

Hon. R. L. Mosley,
Clerk of Circuit Court,
Fayette County,
Fayette, Alabama.

Clerk of Circuit Court—Fees for preparing transcript in criminal appeal cases governed by Sections 6102 and 6108, Code of 1923, and Section 3739, Code of 1923, as amended by Acts 1931, p. 331.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of September 25, 1935, in which you request my opinion as to the proper fees of the Clerk of the Circuit Court for making transcripts in criminal cases appealed to the Supreme Court and Court of Appeals.

The matter of your inquiry involves as a construction of Sections 6102 and 6106, Code of 1923, and Section 3739, Code of 1923, as amended by Acts 1931, p. 331.

Section 6102, Code of 1923, provides as follows:

"6102. Transcript made by clerks; fees for.—After taking an appeal in the manner herein provided, and filing in the cause a bill of exceptions, or the expiration of the time for filing such bill of exceptions, or if the appellant sooner direct, the clerk, the register, or judge of probate, as the case may be, shall make out a transcript as required by law, and deliver the same to the appellant. He shall in making the transcript make a copy thereof for the appellee and deliver it to him or his attorney, and for the transcript he shall have ten cents for each one hundred words and for the copy five cents for each hundred words, both of which shall be taxed as costs against the unsuccessful party in the appeal. The appellant shall be entitled to procure a copy of said transcript by paying therefor at the rate of five cents for each one hundred words; provided the appellant make request of the clerk, register, or judge of probate before the preparation of the original transcript."

It will be noted from the above that the clerk is entitled to (1) ten cents for each one hundred words for the original; (2) five cents for each one hundred words for the copy furnished to the appellee or his attorney; and (3) five cents for each one hundred words for the copy furnished to the appellant if seasonably requested. The fee for the copy to the appellant is not taxed as part of the costs but paid directly by him.

Section 6108, Code of 1923, provides as follows:

"6108. Copy of record of appealed cases kept by clerks; fees for.—The clerks of all courts from which an appeal lies to the supreme court or court of appeals, shall be required to make and keep on file in their office an exact copy of the record in all cases certified to said supreme court or court of appeals for use by the parties to such cases. And such clerks shall be permitted to charge, to be taxed as costs of appeals in such cases the sum of two dollars and fifty cents for such copy of the record." This section gives a fee of $2.50 for preparing the office copy.

This office has heretofore ruled that these two sections are not in conflict and both have a field of operation. Therefore, the clerk is entitled to the fees set out in both sections.—**Biennial Report of Attorney General, 1932-1934. p. 370.**

This office has also ruled that a copy should be forwarded to the Attorney General in all criminal cases as he is the attorney for appellee in all such cases. **Biennial Report of Attorney General, 1928-1930, p. 727.** The fee of five cents for each one hundred words for the copy for the appellee, as set out in Section 610, supra, covers this item.

Section 3739, Code of 1923, as amended by Acts 1931, p. 331, provides for a fee of fifteen cents for each one hundred words for making record for the Supreme Court or Court of Appeals. This section is not in conflict with Section 6102, supra, as both have a field of operation. The fifteen cents for each one hundred words provided in Section 3739, as amended, covers the ten cents for each one hundred words for the original and the five cents for each one hundred words for the copy to the appellee (Attorney General in criminal cases) as set out in Section 6102, supra. It will be noted that Section 3739, as amended, does not provide a fee for copies.

What has heretofore been said is applicable to criminal appeal cases notwithstanding the case of **Middleton v. General Water Works & Electric Corporation,** 25 Ala. App. 455, 149, So. 351, cert. den. 149 So. 352. Said case held that the fees of the Clerk of the Circuit Court for preparing transcripts in appeal cases was governed by Section 7278, Code of 1923, rather than by Sections 6102 and 6108, Code of 1923, the sections being in conflict. However, this case was a civil case. Section 7278 is the schedule of the clerk's fees in civil cases, the same being set out in the Civil Code. Section 3739, as amended, is the schedule of fees for clerks in criminal cases, the same being set out in the Criminal Code. As above stated, Section 3739, as amended, is not in conflict with Sections 6102 and 6108, supra.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 18, 1935.

Hon. Fleetwood Rice,
Judge of Probate,
Tuscaloosa County,
Tuscaloosa, Alabama.

Counties—May pay premium for burglary and robbery insurance for protection of funds of Tax Collector and Probate Office provided said funds are the property of the county.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of September 30, 1935, which is as follows:

"Please advise if Tuscaloosa County is authorized to pay premium on bonds for burglary and robbery insurance for the protection of the funds of Tax Collector and Probate Office."

I am of the opinion that your inquiry should be answered in the affirmative provided the funds in question are the property of the county. This expenditure is authorized by Section 24 of Act. No. 622, H. B. 1100, approved July 31, 1931, (Acts 1931, p. 759) which provides as follows:

"Authority of court.—The court has authority * * * 24. To insure insolvent companies the courthouse, jail, machine shops and other buildings of the county against loss by fire and storm, to insure in solvent companies the trucks, tractors, gas shovels, graders, automobiles and other personal property of the county against loss by fire and theft and against liability for damages to person and property. Payments heretofore made for these purposes are validated."

Act. No. 622, H. B. 1100, approved July 31, 1931, amended Section 6755 of the Code of 1925, relative to the general authority of courts of county commissioners, boards of revenue or other like county governing bodies.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 18, 1935.

Hon. S. P. Poyner,
Judge of Probate,
Houston County,
Dothan, Alabama.

(1) Houston County—Local Acts 1931, p. 266, and Local Act approved June 27, 1935 (Act. No. 156, H. B. No. 533) both valid and constitutional.

(2) Houston County—Construction of Section 9 of Local Act approved June 27, 1935 (Act No. 156, H. B. 533) as to the term of office of the county road foreman.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of September 12, 1935, which is as follows:

"No. 1. Please render me your opinion as to the constitutionality of the Rish Bill, page 266, and the Amendment thereto as passed in the present Legislature and known as the Calhoun Bill; approved June 27, 1935.

"No. 2. Please let me have your opinion as to the validity of the following: On August 31, 1935 and while the Commissioners Court was functioning under the Calhoun Amended Bill the following proceedings took place:

" 'Motion was made by Commissioner J. W. Varnum, seconded by Commissioner C. C. McIntyre, and carried, that C. C. McEachin be discharged as Road supervisor as of September 1, 1935. Commissioner C. C. McIntyre voting "yes", Commissioner J. W. Varnum voting "Yes" and Commissioner J. J. Whiddon voting "No".

"Please advise me whether the action of the Commissioners was valid and whether I should honor C. C. McEachin's requisition for salary for the succeeding month.

In answer to your first inquiry, I am of the opinion that both Acts under consideration are constitutional and valid. I am unable to find any constitutional objection to either of them.

The answer to your second inquiry is governed by Section 9 of Act No. 156, H. B. No. 533, approved June 27, 1935, which provides as follows:

> "Section 9. That there is hereby created in and for Houston County, Alabama, the office of County Road Foreman, which office shall be held and administered by an experienced road builder and who shall be a competent civil engineer, who shall be elected or appointed by the Court of County Commissioners or Board of Revenue holding over, under the provisions of this act, within sixty days after its approval by the Governor, and his term of office shall begin immediately after his election or appointment and shall expire on Monday after the second Tuesday in January, 1935, and when his successor is elected or appointed and qualified, and said Court of County Commissioners and their successors shall, immediately after their election, qualification and assumption of office, elect or appoint his successor, who shall serve for a period of four years and until his successor is elected and qualified, unless removed by said Board for cause. Provided, however, the present occupant of the office of Road Supervisor shall hold over as Road Foreman until the expiration of the term of office to which the Road Supervisor has been elected which expires the first Monday after the second Tuesday in January, 1939, unless removed for cause."

It is true that said section is very ambiguously worded, nevertheless, in my judgment, the last sentence being a specific exemption will control over the general provisions of said section. Said section is very specific in providing that the present occupant of the office of road supervisor shall hold over as Road Foreman until the expiration of the term of office to which the Road Supervisor has been elected which expires the first Monday after the second Tuesday in January, 1939, unless removed for cause.

"Unless removed for cause" has heretofore been defined by this office in an opinion rendered to Hon. J. J. Whiddon, Member of County Commissioners, Houston County, on June 13, 1935. In answer to the inquiry presented as to what was meant by "unless removed for cause" it was stated:

> "Your first inquiry can only be answered broadly. 'Cause' which is sufficient to authorize the removal from office means legal cause. The cause must be one which specifically relates to and affects the administration of the office, and must be restricted to something of a substantial nature directly affecting the rights and interest of the public.—**46 Corpus Juris 986** and cases cited.

Assuming that Mr. McEachin was road supervisor, duly elected to hold office until the first Monday after the second Tuesday in January, 1939, the order of the Court of County Commissioners removing him was void, unless they had "cause" therefor, as above defined.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 18, 1935.

Hon. T. A. Brazell,
Chairman, Barbers' Commission,
Mobile County,
Mobile, Alabama.

Mobile County—Construction of Act No. 290, House Bill 817, approved September 2, 1935, creating a Barbers' Commission for Mobile County, relative to the proper fees chargeable and appointing of Secretary-treasurer of said Commission.

Opinion by Assistant Attorney General Screws.

Dear Sir:

This is to acknowledge receipt of letter of September 26, 1935, from Hon. W. C. Taylor written on behalf of the members of the Barbers' Commission of Mobile County. Said letter requests an opinion from this office on the following questions concerning Act. No. 290, House Bill 817, approved September 2, 1935, which created the Barbers' Commission for Mobile County:

(1) What are the proper license fees to be collected by the Commission under the provisions of Section 5 of said Act?

(2) Can a member of the Commission be appointed as Secretary-treasurer under the provisions of Section 3 of said Act?

Your first inquiry is governed by that part of Section 5 of said Act, which provides as follows:

"* * * The original fee for each barber's license shall be $7.50, and the annual renewal fee shall be $7.50. The original fee for any non-resident barber coming into this State shall be $15.00. Every license shall expire on the 31st day of December of each year. * * *"

It is clear from the above that the original fee for residents is $7.50, and for non-residents $15.00. This original fee expires on the 31st day of December of each year; thereafter the annual renewal fee shall be $7.50. It is specifically provided that every license shall expire on the 31st day of December of each year. In other words, a license taken at the present date will expire on the 31st day of December, 1935, and a new license will be required for the year 1936.

I am of the opinion the answer to your second inquiry should be in the negative.

Section 3 of the Act in question, as affects said inquiry, provides as follows:

"* * * The Commission shall appoint and at its pleasure discharge, a secretary-treasurer and such assistants as may be deemed necessary to discharge the duties imposed by the provisions of this Act; The treasurer so appointed shall be required to enter into a bond to be approved by the Commission in the sum of not less than One Thousand ($1,000.00) Dollars conditioned to pay any shortage or loss of funds on hand by said Treasurer during his term of office or at the time that he is holding office. Said Commission shall outline the duties and fix the compensation of the Treasurer. * * * *"

The rule in respect to matters of this kind is set out in 46 Corpus Juris, p. 940, Section 43, which is as follows:

"Powers of Appointment or Membership in Appointing Body. It is contrary to the policy of the law for an officer to use his official appointing power to place himself in office, to that, even in the absence of a statutory inhibition, all officers who have the appointing power are disqualified for appointment to the offices to which they may appoint; nor can an appointing board appoint one of its members to an office, even though his vote is not essential to a majority in favor of his appointment, and although he was not present when the appointment was made, and notwithstanding his term in the appointing body was about to expire, nor can the result be accomplished indirectly by his resignation with the intention that his successor shall cast his vote for him.* * *".

It will be seen from the foregoing that for the Commission to appoint one of its members as Secretary-treasurer would be in violation of public policy.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 18, 1935.

Hon. R. G. Redden,
County Attorney,
Lamar County,
Vernon, Alabama.

Health and Sanitation—Expenses of maintenance of drainage canal used in connection with malaria control project may be paid out of County funds.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion dated September 10, 1935, as follows:

"There is a drainage District in Lamar and Fayette Counties known as the Fayette and Lamar Counties Drainage Districts. There was a canal finished in this district about ten years ago. Since that time the canal has filled up. The War Department wishes to locate a C. C. C. Camp on this canal for the purpose of malarial control. They expect to reopen this canal, but request the County Commissioners Court of Lamar County to guarantee the maintenance of this canal after being opened.

"I want to know if an appropriation each year by the County would be a legitimate charge against the County. In other words, can the County appropriate money for the purpose of keeping this canal open and make it a legal charge against the County funds?"

Subsection 20 of Section 6755 of the Code of 1923 provides that the Court of County Commissioners shall have the authority "To appropriate money to promote or enforce the health and quarantine laws of the state for the benefit of the county and its inhabitants, when requested so to do by the state board of health."

However, Section 1060 of the Code of 1923 provides:

"1060. Claims of health department of counties "or municipalities to be paid out of budget.—In all counties or municipalities which have provided, or which have aided in providing, a budget out of which the claims, demands and expenses of the health department shall be paid, then such claims and demands of the health Department shall not be a claim against the county or municipal treasury, but shall be paid out of the budget or funds, provided the county or municipality has paid into the budget its aliquot or required part of such budget."

If Lamar County has provided or aided in providing a budget out of which the claims, demands or expenses of the Health Department shall be paid as provided by Section 1060, supra, then no appropriation shall be made from the County treasury for the maintenance of the drainage canal in connection with the Malaria Control Project. If, however, no such budget has been provided the reasonable cost of the drainage canal to further malaria control in the County may be paid out of the County Treasury.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 19, 1935.

Hon. Hugh White, President,
Alabama Public Service Commission,
Montgomery, Alabama.

Motor vehicles—advance payments of mileage taxes levied by Alabama Motor Carrier Acts of 1931 and 1932, in custody of Public Service Commission should be paid over to the State Tax Commission.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your letter of September 12, 1935, requesting opinion concerning the disposition of advance payments of mileage tax paid by taxpayers under the Alabama Motor Carrier Acts of 1931 and 1932. I understand from your request that, under the authority of a letter of this office dated July 20, 1932, addressed to your Department, the Alabama Public Service Commission has accepted payments of the mileage taxes in lieu of the bonds provided for by Section 7 of the 1931 Act and by Section 26 of the 1932 Act; and that a balance of such advance payments is now in the custody of the Commission. Schedules 150.21 and 158.22 of the Revenue Act of 1935 relieves the Public Service Commission of the duty of collecting the mileage taxes levied by the 1931 and 1932 Motor Carrier Act, and imposes that duty upon the State Tax Commission.

Section 7 of the Motor Carrier Act of 1931 and Section 86 of the Motor Carrier Act of 1932 are not superseded or affected by Schedules 158.21 or 158.22 of the Revenue Act of 1935.

However, now that the duty of collection of the taxes levied by the above Acts is imposed on the State Tax Commission, it is my opinion that all balances of advance payments of mileage taxes made by taxpayers to the Public Service Commission and now in the custody of that agency, should be paid over to the State Tax Commission.

Inasmuch as the Public Service Commission does not have the duty of collecting the mileage tax, it is suggested that the practice of accepting advance payments of such taxes in lieu of the bonds required by the statutes might better be discontinued.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 19, 1935.

Hon. F. W. Reid,
Clerk Circuit Court,
Blount County,
Oneonta, Alabama.

In case where Circuit Judge allows defendant to dismiss the appeal which he has taken from the County Court to the Circuit Court, and remands the cause to the County Court for enforcement of its judgment, there is no provision of law for the payment of the fees of officials and witnesses incurred in the Circuit Court.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of September 12, 1935, which is as follows:

"A defendant was convicted in County Court and appealed to the Circuit Court. The case was duly docketed and case set for the trial, State Witnesses were subpoenaed and appeared at the call of the case, when the case was called the defendant, who was under an appeal bond to the Circuit Court, pending the appeal, did not answer and a forfeiture was taken and alias capias issued for the defendant.

"Defendant's sureties located him and he was returned by the Sheriff to the county jail. Defendant through his attorney filed notice of withdrawal of the appeal to the Circuit Court and the following bench note was entered by the Circuit Judge.

'Forfeiture made final for one cent and costs.'

'Appeal dismissed and cause remanded to County Court of Blount County, Alabama for enforcement of its judgment.'

"At the trial in County Court, he was fined $100.00 and cost of prosecution and after the cause is remanded back to the County Court for the enforcement of its judgment, the said fine and cost not being paid or secured, the defendant is sentenced to hard labor for the payment of the fine and cost in County Court.

"Considering the above and opinions of the Attorney General 1926-1928 page 288; 1930-1932, page 316 (question 4) please advise:

"1. Are the cost of the clerk, sheriff and the State witnesses incurred in the Circuit Court proper claims against the fine and forfeiture fund of the County, inasmuch as the State Board of Administration disclaims diability for such costs?

"2. If these are not proper claims against the fine and forfeiture fund of the State Convict Department, how are the clerk, sheriff and State witnesses paid for their service before the Circuit Court?"

I am of the opinion that in a case, such as set out in your letter above, that there is no provision of law by which the officials and witnesses can recover their costs and fees incurred in the Circuit Court.

In the case of Green v. State, 106 So. 683, it was held as follows:

"We know of no statute which authorizes a defendant who has appealed from a judgment of conviction in the county court to dismiss his appeal in the circuit court after such appeal has been perfected."

Section 3734 of the Code of 1923, provides as follows:

"3734. The law of costs must be deemed and held a penal law, and no fee must be taken but in cases expressly provided by law. The fees prescribed in this Code shall be the only fees that can be collected by any officer."

There having been no judgment in the Circuit Court imposing the costs on either the defendant or the prosecutor, and the County Court, of course, being without authority to tax the defendant with the costs incurred in the Circuit Court, the only other manner by which the officials might base their claims, would be by the provisions of Section 4039, Code of Alabama, 1923, which section is as follows:

"4039. Whenever there shall be a surplus of the fund arising from fines and forfeitures in the county treasury of any county, over and above the sum required to pay the registered claims of state witnesses, the county treasurer of such county must pay the fees of the officers of court arising from original cases in which (1) the defendant is not convicted and the costs are not imposed on the prosecutor, (2) or in which defendants have been convicted, and have been proved insolvent by the return of executions 'no property found,' (3) or in cases in which the state enters a nolle prosequi, (4) or where the indictment has been withdrawn and filed, (5) or the prosecution abated by the death of the defendant, unless the payment or distribution of such funds are otherwise provided for."

Unless one of the conditions, set out in the above quoted section, is present there can be no legal claim against the fine and forfeiture fund.

I do not think that a dismissal or remandment by the Circuit Judge of a case to the County Court, which has been appealed from said County Court, comes within any of the classifications prescribed in said Section 4039, supra.

The same situation exists in regard to the claims of witnesses. Sections 3763 and 3769, Code of Alabama, 1923, prescribe the method of payment of State witnesses in criminal cases. Said sections are as follows:

"3763. How taxed and paid.—The fees of witnesses, subpoenaed on the part of the state to appear before the grand jury, or before any court in which a criminal prosecution is pending, must be taxed against the defendant, if he is convicted, or against the prosecutor when the costs are imposed on him; but if the defendant is not convicted, and the costs are not imposed on the prosecutor, or if the indictment is withdrawn and filed, or the prosecution abated by the death of the defendant, or if the

costs are imposed on either the defendant or the prosecutor, and an execution against him for the same is returned 'no property found,' or if no indictment is found by the grand jury before whom the witnesses appear, or if a nolle prosequi is entered in the case, such fees must be paid by the county in the manner specified in Section 3769."

"3769. Witness' certificate; how payable; clerk not entitled to fee for issuing.—It is the duty of the clerk of the court to issue a certificate to each witness appearing on the part of the state, stating herein the amount of compensation to which he is entitled the facts which, under the provisions of section 3763 (6660), make it a good claim against the county, which certificate is payable by the treasurer out of any fines and forfeitures in the county treasury; the clerk who issues the certificate hereinabove mentioned shall not be entitled to demand or charge any fee for performing this duty."

It is readily seen from an examination of the two sections hereinabove set out, that no provision is made for the payment of State witnesses where a case is disposed of in the Circuit Court in the manner as set out by you in your letter.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 19, 1935.

Hon. Gaston Scott, Director,
State Highway Commission,
Montgomery, Alabama.

Attention of Mr. H. H. Houk, Chief Engineer.

Public Highways—State Highway Commission has no authority to grant right to erect structure in right of way.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion dated September 17th, 1935, as follows:

"The State Highway Commission wishes to know whether it may grant Judge Lum Duke of Opelika, Lee County, Alabama, the authority to construct a front porch, eight (8) feet in width within the right of way of Project NRM 198 C (1935) Lee County.

"Judge Duke agrees that he will build a neat and attractive structure, subject to the approval of a representative of the State Highway Department that said structure will not interfere with traffic or vision, which permit shall be revocable at any time the State Highway Department shall deem it necessary or advisable to use the area of right of way covered by said structure for other purposes.

"This is a United States Public Works project NRM signifying National Recovery Municipal.

"Please advise whether the State Highway Commission has the authority to grant said permission to construct a structure on the right of way."

Your inquiry must be answered in the negative.

In the case of **First National Bank vs. Tyson,** 153 Ala. 459, The Supreme Court said:

"It may be stated broadly, since it seems to be everywhere settled in this country, that a building or other structure of like nature, erected on a street—which includes its sidewalks—without the sanction of the legislature, is a nuisance; that public "highways belong from side to side and from end to end to the public," and they are entitled to a free passage along any portion of it, not in use by some other traveller, and there can be no rightful permanent use of the way for private purposes.—Elliott on R. & S. Sec. 645."

"It is again well settled, that a municipal corporation cannot license the erection or commission of a nuisance in or on a public street. 'A building,' says Dillon, 'or other structure of like nature, erected upon a street, without the sanction of the legislature, is a nuisance, and the local corporate authorities of a place cannot give a valid permission thus to occupy streets, without express power to this end conferred on them by the charter or statute."

In the absence of statutory grant, the Highway Commission has no au-authority to authorize the erection of any building or other structure within the right of way of a public highway.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 19, 1935.

Hon. Frank N. Julian,
Superintendent of Insurance,
Capitol.

Insurance—Statutory salaries of officials and employees of Bureau of Insurance have preference over General Appropriation Bill of 1935, as concerns appropriation for said salaries.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of October 1, 1935, from which the following facts appear:

The salaries of the officials and employees of the Bureau of Insurance are definitely fixed and set forth in Act No. 138, H. B. 183, approved April 14, 1933 (Acts 1933, p. 124). The total of said salaries, exclusive of the salary of the Superintendent of Insurance, amounts to $8,240.00 per annum. The General Appropriation Bill of 1935 (Act No. 373, H. B. 249, approved September 6, 1935) appropriated $7,640.00 per annum for these salaries, thus leaving a deficiency of $600.00.

In view of the above you request my opinion as to whether the salaries in question are goverened by Act. No. 138, H. B. 183, approved April 14, 1933 (Acts 1933, p. 124) or the General Appropriation Bill of 1935 (Act No. 373, H. B. 249, approved September 6, 1935).

I am of the opinion that the salaries in question should be governed by Act. No. 138, H. B. 183, approved April 14, 1933, p. 124).

In dealing with the identical question here presented this office in an opinion rendered to the State Comptroller, November 28, 1932, stated as follows:

"The question now arises as to whether the pay roll of November, 1932, after November 9th, 1932, the date of the approval of Act No. 328, S. B. 235, known as the "General Appropriation Bill," should be based on the amounts of statutory salaries or the amounts appropriated in the said appropriation bill for the salaries of those statutory offices in cases where the appropriation bill appropriated less amounts for those certain statutory offices than the amounts of the statutory salaries.

"The salaries of State officials may be provided for by continuing appriopriations and it is not necessary that there should be a special annual appropriation for the payment of such salaries.

State vs. Smith, 188 Ala. 432;
Riggs v. Brewer, 64 Ala. 282;
Reynolds v. Taylor, 43 Ala. 420;
Nichols v. Comptroller, 4 Stew. & P. 154.

"A subsequent statute merely appropriating a less sum than that fixed as the salary by a prior general statute does not operate as a repeal by implication of the latter.—**Reynolds v. Taylor,** supra—yet where the subsequent appropriation clearly manifests a legislative intent that it shall so operate, it is sufficient to serve as a substitute during the time for which it is appropriated, but even in that case, the subsequent appropriation only suspends and does not repeal the continuing appropriation. —59 Corpus Juris 261. In other words, the statutory salaries are not changed by the act appropriating more or less than is sufficient to pay such officers, but the appropriations are merely deemed insufficient or excessive; and if deficient in the case of any particular officer, the Legislature may otherwise provide for the payment of the salary due him.— **Riggs v. Brewer,** supra.

"In numerous instances the appropriation bill under consideration appropriated a less amount for the salaries of certain statutory offices than is provided for in the statute creating those certain offices. Section 38 of said appropriation bill provides as follows:

'Section 38. Except as herein otherwise provided, the amounts herein specifically appropriated shall be in lieu of the amounts heretofore provided or appropriated by law for such purposes; and all laws general, special or private, inconsistent with the provisions of this Act are hereby expressly repealed, except private relief appropriations made at the 1931 regular session of the Legislature, and at the special session of the Legislature of 1932 all of which shall remain in force and effect.'

This section, in my opinion, shows a legislative intent that the appropriations set out in the appropriation bill shall operate accordingly.

The instant case, therefore, is analogous to the case of **Riggs v. Brewer,** supra, and the rule therein set out is applicable. In other words, the Legislature merely failed to appropriate sufficient sums to pay certain statutory officers and such appropriations are merely deemed deficient; and the Legislature may otherwise provide for the payment due those certain officers."

Section XVII of the General Appropriation Bill of 1935, supra, is to the same effect as Section 38 of the General Appropriation Bill of 1932, as above set out.

In said opinion it was further held that the deficiency between the statutory salaries and the appropriation may be supplemented out of the Governor's Emergency Fund. This holding is likewise applicable to the instant case. Moreover, in my opinion, in the instant case the deficiency may be supplemented out of that part of the appropriation to the Insurance Department for "general expense."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 19, 1935.

Hon. Wm. F. Black,
Acting Director, Transportation Bureau,
Alabama Public Service Commission,
Capitol.

The operation of a motor vehicle or bus on a road owned by a corporation or an individual, such a road not being used by the public, but used solely for private purposes, for transporting workmen to and from their work, does not bring the operation of such bus or motor vehicle under either the Alabama Motor Carrier Act of 1931 nor the Alabama Contract Common Carrier Motor Vehicle Act of 1932.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of September 12th, 1935, in which you request my opinion as follows:

"An established bus company operating between several points in the State under the Alabama Motor Carrier Act of 1931 has entered into a contract with the Woodward Iron Company wherein it agrees to transport employees of the Woodward Iron Company between Woodward, Alabama, and the Dolomite Mine, which mine is owned and operated by the Woodward Iron Company. It is represented to the Commission that the distance to be covered by this operation is approximately seven miles, and that practically the entire distance is over a road on the property of the Woodward Iron Company. It is our further understanding that this road was constructed and is maintained by the said Woodward Iron Company and has not been devoted to public use.

"It is our further understanding that the route to be traversed, except that portion within the corporate limits of Woodward, Alabama, and ex-

cept where it crosses a public highway, is on the property of the Woodward Iron Company. The operator in question now owns a certificate of public convenience and necessity over the highway which the proposed route crosses.

"On the above facts will this operator, as to the operation described, come within the influence of either the Alabama Motor Carrier Act of 1931 or an Act of the Legislature approved October 28, 1932 (H. B. 113)?

I note also in your explanatory request of September 12th that you say that Woodward, Alabama is not an incorporated town.

Construing the Alabama Contract Common Carrier Motor Vehicle Act of 1932, also the Alabama Motor Carrier Act of 1931, in the light of the facts set out in your request, I do not think the operation you detail can be brought under said Acts. You state that the route traversed by the carrier company operates altogether on a road constructed, maintained and owned by the Woodward Iron Company; that this road has never been used by the public or dedicated to public use; that said road is kept up by the Woodward Iron Company; that neither the State nor the County has any interest in same. The bus is used only for transporting employees of said company to and from work, and is never used for the transportation of the general public; that the only place where the road touches the public highway is at a crossing and here it simply crosses such highway and does not traverse any other portion of any public road or highway.

This being true, this opinion could not be classed so as to bring it under the Alabama Motor Carrier Act of 1931, approved June 19, 1931, under section 1. In order for the operation of a motor vehicle to come under this Act, it must be operated over some public street, alley, road or highway in the State.

Of course, if any portion of any public road, highway, etc., is traversed by this bus or motor vehicle, then its attitude would be changed, but the mere crossing of such a public road or highway does not, in my opinion, bring it within the terms of the Act, supra. And now for the reason set out above, in discussing the Act of 1931, known as the Alabama Motor Carrier Act, I am of the opinion its operation does not bring it under the Alabama Contract Common Carrier Motor Vehicle Act of 1932. You will note this Act, in Section 1, says among other things:

"And for transportation on the public highways in this State of persons or property for hire."

So, construing this Act in the light of the facts submitted, I do not think that the operation of this bus or motor vehicles comes under the Act of 1932, supra.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 23, 1935.

Hon. Watkins M. Vaughan,
Judge of Probate,
Selma, Dallas County, Alabama.

County governing body authorized to dispose of securities in which sinking fund has been invested where the facts show that said securities, since their purchase, have steadily declined and unless steps are taken the county will suffer loss of part of its sinking fund.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of July 29, 1935, which is as follows:

"I desire your opinion on the following statement of facts: A county issues bonds and sells those bonds to another county in Alabama, which the latter county pays out of sinking funds of the latter county. The debtor county fails to pay the interest on said bonds and all are in default. The bonds have greatly shrunk in value on the market and the creditor county desires to get rid of the bonds by selling them to the best possible advantage. Is it lawful for the creditor county to dispose of those bonds at the best price possible, though under their par value and under the price paid, or does the county have to retain them looking for a better price, or even a complete loss?"

Section 2294 (61) Code of Alabama, 1923, provides as follows:

"2294 (61) Sinking funds.—All sinking funds provided for the retirement of bonds shall be invested in bonds of such sub-division, or in bonds of the United States of America, or in bonds of the state of Alabama, or in bonds of any county in the state of Alabama, or any municipal corporation of the state of Alabama, or deposited in bank on interest. All sinking funds created by resolution or ordinance heretofore adopted must be properly set aside each year in accordance with the resolution or ordinance provided for the same, and a report made thereof and filed with the clerk of the municipality or with the probate judge of the county, as the case may be, showing in detail how said sinking fund is invested or deposited. All contracts now in effect for purchasing savings certificates, under the law as it heretofore existed shall, continue as legal investments." Section 6755 (22) provides as follows:

"22. To set aside such part of the revenue of the county as may be deemed expedient for the purpose of creating a sinking fund for the payment of bonds or other indebtedness, and to invest such sinking fund in such interest-bearing securities, or deposit the same on interest-bearing account, within the state, as said court may deem wise."

The answer to your question, to a certain degree, depends upon the facts actually existing in each particular case.

I do not think that the statutes above quoted, intended to prevent the Court of County Commissioners from exercising supervision over the securities purchased as an investment to the extent that they cannot take sufficient steps to save the County from sustaining the loss of funds which have

been set aside for the purpose of retiring the outstanding indebtedness of the county.

"The word 'invest' has been judicially defined as follows: 'To surround with or place in, as property in business; to place so that it will be safe and yield a profit. It is commonly understood as giving money for some other property.' "—**Drake v. Crane, 29 S. W. 990.**

"The word 'invest' means to convert into some other form of wealth usually of more or less permanent nature; to employ for some profitable use; to place so that it will be safe and yield a profit; to surround with or place in"—**Papp v. Munger, 268 Pac. 1100.**

"To 'invest' money carries the idea of or laying it out as to produce a return. To invest is not to expend in an unproductive thing." Davis V. Ballington, 274 S. W. (2) 555.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 24, 1935.

Hon. Gaston Scott, President,
State Highway Commission,
Capitol.

Attention: Mr. H. H. Houk.

Highways—Street Railway Company in City of Birmingham not liable for cost of changing grade of car tracks under Project WPGM-384, the work being done by the State Highway Department.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of October 8, 1935, from which the following facts appear:

"Under Project WPGM-384, the State Highway Department plans to build an underpass under the Seaboard Air Line Railroad on 5th Avenue, South, Birmingham along which street the Birmingham Electric Company has a double track. In so doing it will be necessary to change the grade along the street and in so doing the grade of the Birmingham Electric Company's car tracks will be changed."

You inclose copy of the Birmingham City Ordinance and a copy of the Birmingham Electric Company Franchise.

In view of the above you request my opinion as follows:

"Is the Street Railway Company in question, under its franchise or under any other law applicable, required to pay for the necessary change in the grade of its car track?"

I am of the opinion that your inquiry should be answered in the negative. An examination of the city ordinance and the franchise granted to the Street Railway Company shows that said Street Railway Company would be liable for a change in the grade of its car track area where the projects are

done at the instance of the City of Birmingham. However, under the ordinance and franchise in question, there does not seem to be any liability imposed upon the Street Railway Company when the work is done by the State of Alabama.

This office has heretofore ruled that there is no liability upon Street Railway Companies for such costs under Article 33, Chapter 43 (Sections 2174-2237) of the Code of Alabama of 1923, when the work in question is done by the State of Alabama. Such provision relates only to improvements done by the city or town and not to improvements done by the State.—**Opinion of the Attorney General to the President of the State Highway Commission on August 1, 1935.**

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 24, 1935.

Hon. W. E. Butler,
Judge of Probate,
Madison County,
Huntsville, Alabama.

Driver's License—

1. Any officer authorized to administer oaths may administer the oath required of an applicant for driver's license.

2. Applicants for a driver's license do not have to appear in person before the Judge of Probate to secure a license.

3. The Judge of Probate must pass upon the qualifications of the applicant.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of October 11, 1935, as follows:

"I am being repeatedly asked for an official expression as to whether or not an application for a Driver's License may be executed outside of the Probate Office before a Notary Public instead of before the Probate Judge or one of his Clerks.

"To give you an example: A owns and operates a plantation 15 miles from Huntsville upon which plantation there are twenty persons now engaged in making crop who all have occasion to drive a car. A does not feel that he can spare these people time to make this 30 mile trip to get a Driver's License and wants to know if applications taken before a Notary Public in each of these cases can be brought in by one person to the Probate Judge for issuance of all twenty licenses to one man for delivery to the actual drivers.

"My policy up to the present has been that each individual must appear personally in the Office but I really do not want to inconvenience a considerable part of the population of Madison County as would be the case were I ruling too technically on this point.

"Please give me your opinion as to what should be done in cases similar to the one mentioned above."

Answering your question as to whether or not the oath required of applicants for a driver's license may be executed by a Notary Public instead of before a Judge of Probate or one of his Clerks, I wish to say that by opinion of this office, addressed to Hon. W. W. Hill, Judge of Probate of Montgomery County, under date of October 7, 1935, it was held "that the provision that the Probate Judge or any Clerk in said office shall have authority to administer oaths required on said applications and no charge shall be made for said services, does not prevent or forbid the right of any officers authorized to administer oaths to take the affidavit required on such application." Therefore, the affidavits required of applicants for drivers' licenses may be executed before a Notary Public, he being an officer authorized to administer oaths.

Answering your question as to whether applicants for a driver's license have to appear in person before a Judge of Probate, I call your attention to the first sentence of Section 2 of the Act providing for a driver's license, which reads as follows:

"Such person shall apply under oath to the Probate Judge of the County of his residence for said driver's license or a renewal thereof, upon a form to be provided by the State Highway Department."

It will be noted that this does not require the applicant to appear in person before the Probate Judge. Such a requirement does not appear anywhere in the act. Therefore, it is my opinion that applicants do not have to appear in person before the Judge of Probate to secure a driver's license.

However, the facts that the oath of an applicant may be executed before a competent officer other than the Judge of Probate or one of his Clerks, and that the applicant does not have to appear in person before the Judge of Probate in order to secure a license do not relieve the Judge of Probate of his duty of passing upon the qualifications of the applicant as provided in the Act. In the opinion of this office to Hon. W. W. Hill, supra, it was held that "This does not relieve the Probate Judge of his duty of passing on the qualifications of the applicant."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 24, 1935.

Hon. Theo. Hurt,
Clerk & Register,
Marion, Alabama.

In cases of public drunkenness, the defendant is required to pay immediately the fine and costs or confess same with sufficient surety; but in the event he fails to do either of these, then he may be sentenced to hard labor for the county to pay the fine and costs.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 10, 1935 in which you request my opinion as follows:

"Section No. 3883 of the Code of 1923, says the fine to be paid in money only.

"Please advise me if the defendant in a case of drunkenness can confess judgment for the fine and costs, or can he be sentenced to hard labor for the fine."

Certainly he may confess for fine and costs or on failing to promptly pay or confess, he can be stentenced for same to hard labor for the county. I imagine the thing that has you confused is that Section 3883 of the Code of Alabama, 1923, which deals with public drunkenness, winds up by saying: "To be paid in money only." This section comes over from the Code of 1907 under which fines could be paid by script registered against the Fine and Forfeiture Fund of the county, but the Code of 1923, Section 4038 changes the law referred to above and provides that all fines and forfeitures "shall be payable in money." This being true, all fines now are payable in money only, unless otherwise specifically provided.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 24, 1935.

Hon. J. C. B. Gwin,
Deputy Probate Judge,
Bessemer Division,
Bessemer, Alabama.

Deed from trustees to beneficiaries of trust, held subject to deed tax.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of February 13, 1935, in which you state:

"Please furnish us as promptly as possible, your opinion as whether we should charge deed tax on a conveyance of real estate from a Trustee to the Beneficiaries of the Trust where the property is valued as $3000.00 and there is no money consideration for the transfer."

If the legal title was in the trustees, it is my opinion that such instrument would be subject to the tax.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 25, 1935.

Hon. N. P. Tompkins,
Judge of Probate,
Colbert County,
Tuscumbia, Alabama.

License—An abstractor doing business in more than one county must take out a State and County license in each County in which he does busiess.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of October 1, 1935, which follows:

"Please give a ruling on the following case:

"An abstractor has taken out State and County license in the County where he has his only office.

"The Tennessee Valley Authority has employed him to go into other counties to abstract lands in connection with the river development in this valley. He does not solicit other business in those other counties. His general practice is confined to the county in which he has taken out license, and in which he has a regular office. In the other counties, he has but the one order for T. V. A.

"His practice is to take a clerk into the other county, prepare his abstract notes there; then carry same to the home office, there to complete, assemble and deliver the work.

"Is an abstractor operating as above, liable for license in the other counties? If so, would that apply only to the license due the other county? Or must he take out new State license in each of the other counties?

"I will appreciate it if you give a ruling on this before October thirty-first."

The question raised in your letter involves an interpretation of the license for abstractors, as levied by Schedule 1 of Section 348, Chapter 1, Article 13 of the Revenue Act of 1935, which reads:

"Schedule 1. Abstract companies and persons engaged in the business of furnishing abstracts of title, in towns or cities of one hundred thousand inhabitants or more, Seventy-Five Dollars ($75.00); in towns or cities of fifty thousand inhabitants and less than one hundred thousand inhabitants, Fifty Dollars ($50.00); in towns or cities of twenty thousand inhabitants and less than fifty thousand inhabitants Forty Dollars ($40.00); in towns or cities of ten thousand inhabitants and less than twenty thousand inhabitants, Twenty-Five Dollars ($25.00); in towns and cities of five thousand inhabitants and less than ten thousand inhabitants, Twenty Dollars ($20.00); and in all other places whether incorporated or not, Ten Dollars ($10.00). The payment of the license required by this Schedule shall authorize the doing of business only in the town, city or county where paid. Provided, that the foregoing schedule shall not apply to regular licensed practicing attorneys who furnish abstracts as a part of their general practice."

To determine whether the abstractor mentioned in your letter must pay a State and County license in each county where he is abstracting lands for the Tennessee Valley Authority, we must first decide whether he is "doing business" in these counties. If he is "doing business" in more than one county, he must pay a State and County license in each county in which he "does business," since the schedule of the Revenue Act, supra, provides that "the payment of the license required by this schedule shall authorize the doing of business only in the town, city or county where paid."

"The term 'doing business in another county', within the meaning of Compiled Statutes 1921, Section 9625, is often more a question of fact than of law."

Standard Paving Co. v. County Board of Equalization of Beckham County, 273 P. 201, 206, 135 Okla. 15, cited in Words and Phrases, Fourth Series, Volume 1, page 783. To me it has a like meaning as used in the Schedule of the Revenue Act, supra.

As I interpret the facts given in your letter, this abstractor, though working only for the Tennessee Valley Authority is probably preparing many abstracts of lands in counties other than the one where he has his only office and has taken out his State and County license. You say that "The Tennessee Valley Authority has employed him to go into other counties to abstract lands," and further, "His practice is to take a clerk into the other county, prepare his abstract notes there; then carry same to the Home Office, there to complete, assemble and deliver the work." The making of the abstract notes, which you say he makes in the other county is an integral part of the making of the abstract, and, in my opinion, is sufficient to constitute him engaged in the business of making abstracts in the other county. " 'Engage' means to take part in or to be employed in, and connotes more than a single act or single transaction." Head v. New York Life Insurance Company (C.C.A. Okla.) 43 F. (2d) 517, 520, cited in Words and Phrases, Fourth Series, Volume 1, page 887.

Since, as I interpret the facts of the case presented by your letter to mean that this abstractor is doing more than making a single abstract in the other counties where he is doing work for the Tennessee Valley Authority, it is my opinion that he must take out a State and County license in each county in which he does this work under the Schedule of the Revenue Act, supra. An abstractor doing business in more than one county must take out a State and County license in each county in which he does business.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 25, 1935.

Hon. Eugene H. Hawkins,
Judge of Probate,
Jefferson County,
Birmingham, Ala.

Notice, Publication of—Act. No. 370, approved September 7, 1935 requires operation of newspaper for 52 consecutive weeks immediately prior to date of publication of legal notice in order to qualify as a medium for such advertisement.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion dated October 11, 1935 as follows:

"The Birmingham Free Press and Industrial Record, has asked whether or not its paper is eligible for legal advertising within the provisions of a recent act of the Legislature.

"I enclose herewith letters from Mary J. Keith, owner of the paper, which set out the facts relied upon to bring the Free Press within the provisions of the Act."

It appears from the attached letter that the newspaper "The Industrial Record" was established in Jefferson County in 1915 and was printed and published in the County, exercising second class mailing privileges, until 1917, when it suspended publication; that another newspaper "The Birmingham Free Press" was established in Jefferson County in May 1935, and has exercised such mailing privileges continuously since that time; that in October, 1935, the publisher of the latter newspaper purchased the rights and all intangible assets of the "Industrial Record" which had laid dormant since 1917 and "merged" it with the then going "The Birmingham Free Press" and named the merged newspaper "The Birmingham Free Press and Industrial Record."

It is ingeniously argued in the letter attached to your request for opinion that inasmuch as the requirement of the statute that such legal advertisements must be published in a newspaper in the county (if there be such) "which has a general circulation in the county in which it is published, which newspaper shall have been mailed under the second class mailing privilege of the United States Post Office Department from the Post Office where it is published for fifty-two (52) consecutive weeks" does not specifically require that the said periods should have been immediately prior to the date of the publication, the "merged" newspaper should be able to tack on the 1915-1917 period of publication of the dormant 'The Industrial Record' in order to qualify. Although this argument may find apparent support by giving a literal construction to the words of the statute, it falls before the obvious intention of the Legislature in enacting it. The purpose of the statute is to protect the rights of parties litigant and of mortgagors and other creditors who have conveyed their property as security for debt. The requirement of fifty-two (52) weeks successive operation, under second class mailing privileges, of a newspaper in order to qualify it as a medium of advertising legal notices is nothing more nor less than the legislative declaration of a rule for determining, in point of time, when a newspaper attains the status of being a "newspaper of general circulation in the county." The literal words of the statute are oftentimes at variance with the obvious intention thereof, and in such cases the intention prevails.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 25, 1935.

Hon. Coma Garrett, Jr.,
Judge of Probate,
Clarke County,
Grove Hill, Alabama.

Counties—It is mandatory that counties generally should comply with the provisions of the "County Financial Control Act." Under said Act counties may issue refunding warrants in payment of outstanding warrants and pay interest thereon.

Opinion by Assistant Attorney General Screws.

Dear Sir:

This is to acknowledge receipt of your letter of October 8, 1935, relative to the construction of Act No. 279, H. B. 191, approved September 9, 1935, known

as the "County Financial Control Act." Your letter presents the following inquiries:

1. Is it mandatory for counties to operate under the provisions of said Act?

2. Can refunding warrants be issued in payment of old unpaid outstanding warrants if there are no funds available for their payment at the time of issuance of the refunding warrants?

3. If said refunding warrants are issuable, payable in the future, do same bear interest?

In answer to your first inquiry, I am of the opinion that the provisions of the Act in question are applicable to all counties which do not have a population of 95,000 or more according to the last or any subsequent Federal census, and which do not have Local Acts on the subject applying to single counties.

The Act throughout is very specific in the authority conferred on and the limitations of Courts of County Commissioners, Boards of Revenue or other like county governing bodies in the administration of the financial affairs of the county.

Section 19 of said Act repeals all laws or parts of laws, except local acts applying to single counties, conflicting with any of the provisions of said Act.

Section 21 specifically provides that the provisions of this Act shall not apply to any counties having a population of more than 95,000 according to the last or any subsequent Federal census. This clearly shows a legislative intent that it shall apply to all other counties.

I am of the opinion that your second inquiry should be answered in the affirmative.

Said Act provides for the issuance of warrants for current expenses and for past due obligations. Section 7 of said Act provides that no county shall issue warrants unless cash is available for payment upon presentation to the treasury or depository. This section, in my judgment, applies to current expenses and not to refunding warrants issued for the purpose of paying old outstanding warrants. The issuance of refunding warrants is governed by Section 9 of said Act.

Section 9 of said Act provides as follows:

"Section 9. SHALL REFUND OUTSTANDING WARRANTS. It shall be the duty of all Boards of Revenue, county Commissioners and other like governing bodies of the counties to refund all warrants, which are unpaid and past due at the time this Act goes into effect, and for which there is no money available at that time. Refunding warrants may be sold at not less than par and the money to pay the owners of old warrants or they may be exchanged for old warrants upon any practicable plan such Boards may fix; provided, that refunding warrants may not be issued for amounts greater than the old warrants, plus any interest that may have legally accrued on such old warrants as bear interest themselves. Such refunding warrants may be issued under the law now in force, except that they may be made to mature annually over a period not exceeding twenty years. In the issuance of such refunding warrants care should

be exercised to avoid favoritism in the matter of maturities. With the consent of the holders thereof, any county may refund, under the provisions of this Act, temporary loans outstanding when this Act goes into effect made in anticipation of the collection of taxes for the time and under the conditions and terms provided herein for the refunding of outstanding warrants."

In answer to your third inquiry, it is necessary to refer to Section 6784 of Code of 1923, as amended by Acts 1931, p. 612. It will be noted that Section 9, supra, provides that the refunding warrants may not be issued for amounts greater than the old warrants, plus any interest that may have legally accrued on such old warrants, as bear interest themselves. This proviso, in my opinion, applies to the principal amount of the refunding warrants. The interest phase is governed by that part of Section 9 which provides that "such refunding warrants may be issued under the law now in force, except that they may be made to mature annually over a period not exceeding twenty years. We must, therefore, look to the law in force as to the issuance of refunding warrants, which is Section 6784 of the Code of 1923, as amended by Acts 1931, p. 612, which is as follows:

"6784. How long shall run; interest rate, etc. Warrants issued under the provisions of the two preceding sections, 6782 and 6783, may run for a time not exceeding fifteen (15) years and may bear interest at a rate not to exceed six per cent (6%) per annum. Said interest shall be payable annually or semi-annually and may be evidenced by coupons attached to said warrants or otherwise, in the discretion of the court of county commissioners or other governing body of said county."

It will be seen from the above that the refunding warrants may bear interest at a rate not to exceed 6% per annum. It is not mandatory that said refunding warrants bear interest and in this matter Courts of County Commissioners, Boards of Revenue and other like county governing bodies have discretion as to the rate of interest said warrants shall bear subject to the limitation of 6% per annum. The only change made by the County Financial Control Act under consideration, is that said warrants may mature over a period ot exceeding twenty years as against the fifteen years as set out in said section as amended.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 26, 1935.

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Under Sections 436 and 478 of the Code it is the duty of the sheriff to provide space for voting and adequate booths therefor at the expense of the county.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of July 19, 1935 in which you request my opinion as follows:

"It has been customary in Jefferson County for the County Commission to authorize the placing of two or three District Ballot Boxes in the same building, for which it pays $5.00 each in rent.

"I would like to know whether or not the Commissioner was authorized by law to pay more than $5.00, that is rent more than one Ballot box, for each polling place.

"For your information the letter of Examiner Singleton, from which this request results is attached hereto."

I call your attention to Section 436 of the Code of 1923, which is as follows:

"436. Number of ballot boxes, and by whom provided.—The judge of probate, sheriff, and clerk of the Circuit Court of each county in this State shall provide one ballot box, and where it is deemed necessary, shall provide more than one and not more than three, at each place of voting."

And likewise Section 478, which is as follows:

"478. Booths and place for holding election must be provided by sheriff.—The sheriff of each county, **at the expense of the county,** or in case of a municipal election, the mayor or other chief executive officer, at the expense of the municipality shall provide at each polling place in all municipalities of over three thousand inhabitants, a room or covered enclosure, and in such room or covered enclosure shall provide booths or compartments, one booth or compartment for each one hundred or fraction of one hundred over fifty electors registered in the ward or wards in such municipality for that election and shall furnish each both or compartment with a shelf or table for the convenience of the electors in the preparation of their ballots. Each booth or compartment shall be so arranged that it will be impossible for one elector at a shelf or table in one compartment to see an elector at a shelf or table in another compartment in the act of marking his ballot. Each voting shelf or table shall be kept supplied with conveniences for marking the ballots. In all other places other than in municipalities of over three thousand inhabitants, no booths or compartments shall be required."

It is my opinion from the foregoing that it is the duty of the Judge of Probate, Sheriff and Clerk to furnish not more than three ballot boxes for each voting place in the county and that the sheriff shall provide a room or covered enclosure for such booths.

It is my judgment that this is authority for the sheriff to provide adequate space to hold the election whether in such building or enclosure there are one or more booths, and that in the absence of fraud, the amount of rent to be paid for such space is to be determined by the sheriff. While the method used by the sheriff of charging the space at so much per box may be artificial, in the last analysis, it amounts to nothing more nor less than paying a lump sum for the building and hence it was a matter within his discretion.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 28, 1933.

Hon. W. L. Pratt,
Judfe of Probate, Bibb County,
Centerville, Alabama.

Motor vehicles—Exemption of non-resident owners from registration and license limited to thirty days from date of entering state.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your letter of October 21, 1935 in which you request my opinion as follows:

"A car with a New Jersey tag coming into Alabama last May with Alabama having full reciprocity with New Jersey and the New Jersey tag becoming delinquent December 31st, 1935, should the said car be required to procure a license tag October 1st, or would it be permitted to run until December 31st, and if an Alabama tag is required October 1st, does the party with the New Jersey tag have until November 15th to procure tag in Alabama."

In my opinion the motor vehicle license for the party in question is due on October 1st and delinquent on November 15th thereafter as provided by Schedule 158.17, page 338 of the Revenue Bill of 1935, H. 324, which reads as follows:

"SCHEDULE 158.17. All motor vehicle licenses under this Act shall become due on October 1st of each year and delinquent on November 15th thereafter."

I call your attention to Schedule 158.15, page 337 of the Revenue Bill, supra, which provides in part:

"SCHEDULE 158.15. The provisions of the foregoing sections relative to registration and display of registration numbers shall not apply to a motor vehicle owned by a non-resident of this state and not used for hire in this State, for a period of 30 days from date of entering the State, provided that the owner thereof shall have complied with the provisions of the law of the foreign country, state, territory or Federal district of his residence relative to registration of motor vehicles and the display of registration numbers thereon, and shall conspicuously display his registration number as required thereby; Provided further that nothing therein shall be construed to permit the use of motor vehicles for hire by non-residents without complying with the provisions of this Act.

It is to be noted that this Schedule amends Section 31, page 223 of the Revenue Laws of 1929 by the insertion of the following: "for a period of 30 days from date of entering the State." Under the facts detailed by you, the party has been in the State for a period exceeding this 30 days period, and consequently cannot come within the exemptions provided for non-resident owners set out above.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 28, 1935.

Hon. Frank M. Stewart, Secretary,
Alabama State Milk Control Board,
Montgomery, Alabama.

Milk Control Board has no authority under House Bill Number 311, Hamner, to fix prices on "Orange Ade" sold by milk dealers.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of September 30th, in which you request my opinion as follows:

"As provided in the Hamner Milk Control Act approved July 9, 1935, State Milk Control Board requests your opinion on the following subject:

"Does the State Milk Control Board have authority to fix a price on Orange Ade sold and distributed by milk plants or milk distributors?"

In reply I wish to advise that in my opinion your question should be answered in the negative.

I made a careful study of the Act in question and I find that the provisions of the Hamner Milk Control Act, House Bill No. 311, in my judgment, apply only to milk. Section 2 of the Act defines milk as follows:

"Milk" means the lacteal secretion of a dairy animal or animals, and includes such secretion when cooled, pasteurized, standardized or otherwise processed, with a view to being sold as milk, and also cream, buttermilk and skimmed milk sold or intended to be sold as such for human food; said term excludes the lacteal secretion of a dairy animal or animals sold or intended to be sold for any other purpose.

In my opinion, Orange Ade sold and distributed by milk plants or milk distributors, could not be included in the definition of milk and the board is not authorized by the provisions of this Act to fix a price on Orange Ade.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 28, 1935.

Hon. W. W. Hill,
Judge of Probate,
Montgomery County,
Montgomery, Alabama.

The provision following the levying subdivisions of Schedule 93½ providing, "provided however that if an office is maintained in more than one county, the license shall be one-half of the above license payable in each additional county where an office is maintained" held to apply to the entire schedule.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of October 24, 1935 in which you state:

"There is some confusion as to what license should be issued under Schedule 93½, page 39, of the printed 'License Privilege Tax'. The question that presents itself is, if an Industrial Loan Company takes out a license in the county in which the Home Office is, and pays the license tax of $100.00, as provided in Section 2 of said act, and desires to take out an additional license in another county than the one in which the main office is situated, should they pay an additional $100.00 for the branch office, or do they pay, under Section 3 of the Act, one-half of that amount?

Schedule 93½ to which you refer provides:

1. "Each person engaged in this county of buying conditional sales contracts etc. shall pay an annual license as follows:"
Then follows the schedule based on the amount of capital employed.

"The payment of which shall be sufficient to engage in business in any county of the State except county in which principal office is located, in which case county license will be one-half of above schedule."

2. "Each person engaging in business of lending money on salaries or making industrial or personal loans shall pay an annual license of $100.00 for each county in which they engage in business."

3. "Each person lending money on mortgages secured by real estate in this State shall pay an annual license based on the amount of such loans made during any taxable year as follows:"
All this is followed by this proviso:

"This schedule shall apply to all such persons whether organized under the laws of this State or any other State or territory or county (sic), the payment of the license in each county of the state as evidenced by the license certificate of the Judge of Probate shall be sufficient; provided, however, that if an office is maintained in more than one county, the license shall be one-half of the above license payable in each additional county where an office is maintained."

As I understand it, your inquiry is addressed particularly to subdivision 2 of schedule 93½ as affected by this last quoted proviso.

The statute as written is not at all clear as there seems to be a specific provision in each of the different classifications set out under schedule 93½. However, the proviso does not refer to either of the separate classifications but says, "this schedule," which is all inclusive and unless controlled by the specific language of the particular subdivisions of the schedule, would apply to the entire schedule. Admittedly the proper construction is one of doubt. Where a statute is doubtful or ambiguous, under the rule that a tax statute is to be construed strictly against the State and in favor of the taxpayer, I am persuaded that the last proviso above quoted, which states specifically "this schedule" must apply to the entire schedule and, therefore, modifies the specific provision of the various subdivisions of the schedule. State vs. Fain Service Station 124 So. 119.

I am, therefore, of the opinion that the proper license for an industrial loan company is $100.00 for the State and $50.00 for the County in its chief office or place of business, and $50.00 to the State and $25.00 to the county in each additional county where an office is maintained.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 29, 1935.

Hon. Wm. W. Hill,
Judge of Probate, Montgomery County,
Montgomery, Alabama.

Driver's License—Party must appear before the Probate Judge or some clerk in his office, Notary Public or other officer authorized to administer oaths in person to make oath required of applicant.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your letter of October 12, 1935, in which you request my opinion as follows:

"There are many who come in, especially from the rural sections, who know the members of their family, know their defects and conditions. Each member of the family desires to get a Driver's License. Is it permissable, for one who knows the person who wishes to get the license, to make the affidavit, sign his own name and secure the license?

"To illustrate: A, the father of B. desires to secure a license for himself and his son, B. Is it permissible for A to make the affidavit, and upon his affidavit as to B's qualifications, should I issue the license?"

Section 2 of the bill commonly known as the Drivers License Bill (No. 331, House 345), approved September 2nd, 1935, provides that "such person (meaning persons applying for driver's license) shall apply under oath to the Probate Judge, etc."

Section 3 of this Act provides "Every person licensed as a driver or operator of a motor vehicle shall write his usual signature with pen and ink in the place provided for that purpose on the driver's license card issued to him immediately upon receipt of such card * * *."

Section 8 provides in part: "The Probate Judge or any clerk in said Probate Office shall have the authority to administer oaths required on said applications and no charge shall be made for such service."

In view of the foregoing, therefore, it is quite apparent that the legislative intention was that the party desiring license must appear in person before Probate Judge, some clerk in his office, Notary Public or other officer authorized to administer oaths to make the affidavit or oath required and to sign his own name.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 29, 1935.

Hon. J. P. Mitchell,
Judge of Probate,
Abbeville, Alabama.

Gasoline Tax—Permissible use of Counties' share for matching Federal funds under Act No. 19, approved January 31, 1935, superceded as of October 1, 1935, by Schedule 156.11 of General Revenue Act, approved July 10, 1935.

Opinion by Assistant Attorney General Bibb.

Dear Sir:

I wish to acknowledge receipt of your letter of September 21, 1935, which is as follows:

"Under An Act No. 19, Section 17, of the Regular Session of the Legislature, 1935, the Governor may authorize Boards of Revenue to use the One Cent Gas Tax Money 'for the purpose of matching any United States Government funds on any fair and reasonable basis that may be expended in said county.'

"Under Local Law No. 122 (H. 401), Section 4, Extra Session of the Legislature, 1933, it is stated, in substance, that the Road Supervisor shall say when there is a surplus in the Gasoline Funds, and that, when there is such a surplus, it may be used to pay off old debts 'heretofore created in the construction, repair or maintenance of the roads and bridges of the county, including the road bonded indebtedness of the county, PROVIDED, HOWEVER, THAT SAID COURT SHALL NOT BE AUTHORIZED AND IT SHALL BE UNLAWFUL TO USE ANY PART OF SAID GASOLINE TAX FUND OR FUNDS ARISING FROM EXCISE TAXES ON GASOLINE . . . FOR ANY PURPOSE WHATSOEVER EXCEPT FOR THE USES AND PURPOSES AS IN THIS SECTION OF THIS ACT PROVIDED.' (Caps ours)

"Henry County is being called on to set up a County Public Welfare Board. The writer has been informed that, with the permission of the Governor, the One Cent Gasoline Money may be used to defray the expenses of this Board.

"Does the 1935 Act referred to above repeal or nullify the 1933 Local Act? In other words, considering the restrictions imposed by this Local Act, could the Henry County Court of County Commissioners legally use the One Cent Gasoline Money for purposes above stated?

"Inasmuch as the establishing of this Public Welfare Board has been represented as a matter of considerable urgency, an opinion from you at an early date would be appreciated."

It will be observed that Act No. 19, passed by the Regular Session of the Legislature of Alabama of 1935, and approved on January 31, 1935, superceded and repealed, on and after February 1, 1935, Acts 1931, p. 859 (No. 743) which levied a gasoline excise tax of one cent per gallon, to be equally divided among the several counties after October 1, 1932, and also Acts 1932, p. 314 (No. 324) which levied a gasoline excise tax of one cent per gallon for the benefit of the state, and at the same time reenacted a gasoline excise tax of

two cents per gallon, to be divided one-half equally among the several counties, and one-half to the state. In view of this, it is my opinion that it was the intention of the Legislature, and the effect of the law, that the provision contained in Section 17 of said subsequent Act, to-wit:

> "* * * provided, however, that the Board of Revenue or other such governing body of a county may, at any time within twelve months from the passage of this act, use at their option, subject to the approval of the Governor of the State of Alabama, any of such proceeds as collected for the purpose of matching any United States Government funds on any fair and reasonable basis that may be expended in said county."

should prevail for the time and to the extent therein set out over the provisions of any other general or special act, insofar as the particular funds derived from this act are concerned.

However, in an opinion addressed to Hon. Frank N. Johnson, Probate Judge of Winston County, dated October 3, 1935, I held that the General Revenue Act, approved July 10, 1935, superceded the said Act. No. 19, approved January 31, 1935, in this regard on its effective date, October 1, 1935. Therefore, the use of the County's share of the funds accruing under Act. No. 19 in the manner therein permitted and referred to by you is limited to such use thereof only with regard to those funds accruing under Act No. 19 from February 1, 1935, through September 30, 1935. On and after October 1, 1935, the provisions of Schedule 156.11 of the General Revenue Act, approved July 10, 1935, apply.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 29, 1935.

Hon. Page S. Bunker,
State Forester,
Capitol.

(1) Licenses—The Clause "other factory where materials are woven or made" as used in Schedule 59 of the Revenue Act of 1935, is intended to include only such other things as are ejusdem generis.

(2) Licenses—The clause "only one State license shall be paid by the operator or owner of any sawmill" as used in Schedule 123 of the Revenue Act of 1935, applies to the operator or owner of only one sawmill.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of September 27, 1935, which is as follows:

> "Under section 1005 of the Alabama Code of 1923 the State Forestry Fund is composed mainly of 'All occupation license or privilege taxes imposed by the State for engaging in any business dealing with timber or timber products * * * .' Most of the specific license or privilege taxes of the nature indicated are readily identifiable in the various schedules of the Revenue Act effective October 1, approved July 10, 1935, H. B. 324, No. 194. Briefly, such receipts appear to be derived from Schedules 45, 59, 83, 123 and 148.

"In Schedule 59, apparently obvious classifications are pulp mills and paper mills using wood pulp. However, your opinion is requested as to whether the provision of this schedule including 'other factory where materials are woven or **made**' covers header mills, stave mills, cooperage plants, wooden box factories, block mills, excelsior plants, veneer mills, handle factories, wood turning plants, sash and door factories, wood distillation plants, furniture factories, shingle mills, lath mills, cedar chest factories, hub mills, spoke mills, wagon factories, cedar oil plants, boat shops, basket factories, cabinet and show case plants, casket factories and planing mills.

"In Schedule 123 there is a provision that 'only one State license shall be paid by the operator or owner of any saw mill.' Your opinion is requested as to whether this provision means that an owner or operator may operate more than one sawmill and pay but one license; if so, whether such license shall be based upon the capacity of a single mill or upon the total capacity of all the mills operated."

I am of the opinion that your first inquiry should be answered in the negative.

The license schedule under consideration provides as follows:

"SCHEDULE 59. Every person operating a cotton seed oil mill, cotton mill, cloth mill, towel factory, garment factory, yarn mill, hosiery mill, peanut mill, peanut oil mill, peanut shelling plant, paper mill, pulp mill, mill manufacturing sheeting, rugs or carpets, bags, cement, lime, plaster, chemical, acid, (Other than fertilizer) explosive and all mills manufacturing any finished or semi-finished products of thread, yarn, cloth paper, jute rubber or other factory where materials are woven or made: Ten Dollars ($10.00) where the investment for plant, equipment, supplies and fixtures is less than fifteen thousand dollars; Twenty Dollars ($20.00) where the investment for plant, and fixtures is fifteen thousand dollars and less than twenty five thousand dollars, Thirty dollars ($30.00) where the investment for plant, equipment, supplies and fixtures is twenty-five thousand dollars and less than fifty thousand dollars; Fifty Dollars ($50.00) where the investment for plant, equipment, supplies and fixtures is fifty thousand dollars and less than one hundred thousand dollars; One Hundred Dollars ($100.00) where the investment for plant, equipment, supplies and fixtures is one hundred thousand dollars and less than five hundred thousand dollars; One Hundred and Fifty Dollars ($150.00) where the investment for plant, supplies and fixtures is five hundred thousand dollars and less than one million dollars; Two Hundred Dollars ($200.00) where the investment for plant, supplies and fixtures is one million dollars and over. Provided that such investment shall be the total capital employed in such plant and the person applying for such license shall furnish a sworn affidavit showing the amount of his investment and accompany the same by a statement taken from the books of the company showing the amount of such investment and such books shall at all times be subject to the inspection of the State Tax Commission or its agents."

The clause "other factory where materials are woven or made," in my opinion, applies only to those products of a like character as above set out in said schedule. The doctrine of ejusdem generis is clearly applicable.—**Eliasberg Bros. Mercantile Co. v. Grimes**, 204 Ala. 492, 86 So. 56.

I am of the opinion that your second inquiry should be answered in the negative.

The license schedule under consideration is as follows:

"SCHEDULE 123. Each person, firm or corporation engaged in operating a sawmill shall pay a privilege tax according to capacity, as follows: Those having a capacity of five thousand feet or less per day, ten dollars; those having a capacity of more than five thousand and not exceeding ten thousand feet per day, twenty-five dollars; those having a capacity of more than ten thousand and not exceeding twenty-five thousand feet per day, fifty dollars; those having a capacity of more than twenty-five thousand feet and not exceeding fifty thousand feet per day, one hundred dollars; those having a capacity of more than fifty thousand feet per day and not over one hundred thousand, two hundred dollars; those having a capacity of one hundred thousand and not over one hundred fifty thousand, three hundred dollars; those having a capacity of more than one hundred fifty thousand and not more than two hundred thousand, four hundred dollars; and those having a capacity of more than two hundred thousand feet, five hundred dollars, provided only one State license shall be paid by the operator or owner of any sawmill."

The clause providing "only one State license shall be paid by the operator or owner of any sawmill," in my opinion, does not mean that one person may operate or own several mills and pay only one State license. The State license is applicable to a single sawmill and not a single owner or operator. This conclusion is strengthened by the fact that the schedule is based on the capacity of each mill.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 29, 1935.

Hon. W. L. Pratt,
Judge of Probate, Bibb County,
Centerville, Alabama.

License and Taxation—License for sale of near beer not affected by adoption of H 324 Revenue Bill of 1935.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion of October 21, 1935 which reads as follows:

"Under the new Revenue law Near Beer does not seem to be mentioned and I am writing to ask if a license for the sale of Near Beer under the old law is in effect."

By an Act approved October 15, 1932 (No. 89 H. 72 Acts 1932, p. 94), entitled "An Act in reference to and to further provide revenue for the general revenue of the State of Alabama," the legislature placed a tax upon near bear. This was separate and distinct from the General Revenue Laws then in effect.

The present General Revenue Bill, H. 324, effective October 1, 1935, provides:

"Section 411.—That all laws or parts of laws in conflict with the provisions of this Act are hereby repealed."

It is to be noted, however, that the following proviso is included in Section 411:

"Provided that all provisions of existing laws relating to taxation of revenue, which are **not in conflict** with the provisions of this Act and which are not herein expressly repealed, are not hereby repealed."

Further, Section 412, page 395, reads as follows:

"SECTION 412. Nothing in this Act shall be construed to relieve any person from any tax liability, penalty or forfeiture incurred under laws existing before the effective dates of the provisions of this Act, and any provisions of any laws existing before the effective dates of the provisions of this Act, providing for the collection and enforcement of such tax liability, penalty, or forfeiture shall, as to such tax liability, penalty or forfeiture, remain in full force and effect."

From the foregoing, it may be seen that the Legislative intent was clearly expressed to allow the provisions of existing laws relating to revenue, not **specifically** repealed by the Bill itself, and not in conflict to remain in **full** force and effect.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 29, 1935.

Hon. John Ben Darden,
Tax Assessor, Chambers County,
LaFayette, Alabama.

Taxability of motor vehicles determined by its situs for the preceding year.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of October 10, 1935 in which you state:

Please advise me the correct assessment to be placed on an automobile under the conditions below:

"Mr. A. owns a 1933 Ford on October 10, 1935 in Fairfax, Alabama. He paid State & County & School Tax, but no city tax.

"Mr. A. sells car to Mr. B., who lives in LaFayette, Alabama, on June 15.

"Mr. B came in on Oct. 10, 1935 to assess his car. The Town of LaFayette has a city tax. Is Mr. B. subject to be charged to this tax?"

In reply, I advise that as you know automobiles are assessed as of the October preceding and, therefore, in determining the taxability it is necessary to determine the taxable situs of the vehicle for the preceding year. As

I understand your letter, the vehicle was in Fairfax until about June 15, 1935 and particularly was in Fairfax on October 1, 1934. The return and assessment made on October 10, 1935 will, therefore, be based on the situs of the property on October 1, 1934, which was Fairfax. It is, therefore my judgment that there is no city tax payable in 1935.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 29, 1935.

Hon. D. E. Laslie,
Judge of Probate,
Tuskegee, Alabama.

War Veterans—Exemption from license tax—A War veteran engaged in the business of operating what is commonly known as a rolling store is not entitled to any exemption whatever from license taxes.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of October 19, 1935 which is as follows:

"Please advise me on the following:

"An ex-service man, disabled more than 50 per cent with proper certificates filed, asks for exemption allowed by law to Veterans, on Peddlers of merchandise. This is termed as a Rolling Store, and he operates it by himself.

"This opinion is very necessary in order that he may secure his license this month, and I will appreciate your usual prompt attention."

This case you put is clearly covered by the last sentence of Section 1 of Act No. 494 of the 1935 Legislature, approved September 13, 1935, which reads:

"Provided that no exemption, deduction or commutation shall be allowed any person from the license or tax on what is commonly known as rolling stores."

Act No. 494, supra, is the act which grants exemptions, from license taxes to a certain extent, to veterans as provided in the Act. However, it will be seen from the above quoted sentence that no exemption whatever was granted by the Act to veterans operating what is commonly known as rolling stores.

Therefore, a veteran who operates what is commonly known as a rolling store is not entitled to any exemption whatever from license taxes.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 29, 1935.

Hon. Eugene B. Henry,
Commissioner of Licenses.
Birmingham, Alabama.

1. Under Schedule 33, wholesale tobacco dealers are liable for **one** state license of $100.00 and $5.00 to each county in which he does business.

2. Under Schedule 44, credit reporting agencies, other than local credit reporting companies, and mutual trade organizations are liable for a state license of $200.00 on each established place of business and $50.00 as county license on each such established place of business.

3. The provisions of Schedule 158.1 allowing the purchase of license tags on a monthly declining basis applies only to new automobiles kept for private use.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 21, 1935, which reads as follows:

"Will you kindly give me rulings on the following schedules at your earliest convenience so that I will be able to issue license intelligently on October 1st:

Schedule 33: Revenue Bill. Each wholesale dealer in cigars, cigarettes etc. shall pay one privilege license to the State of One Hundred ($100.00) and Five ($5.00) Dollars to each county in which such wholesale dealer does business.

"Should I collect $150 for cigars & cigarettes or $105.00?

Schedule 44: Each person inquiring into and reporting upon the Credit and standing of persons, firms or corporations in this state shall pay: To the State for each place of business maintained in this State a license of $200.00 and shall also pay a license to each county in which such person maintains an office or established place of business of $50.00.

"Should I collect $300.00 or $250.00?

"The reason I am asking questions in regard to above mentioned schedules under general provisions Sec. 350 (b) it reads: There is also hereby levied for the use of each county in the State a license or privilege tax upon each person, firm or corporation engaged in or who shall carry on any of the occupations, business, professions etc. for which a license is charged by the State of fifty per cent of the State license or privilege tax except as herein otherwise provided. The point is not clear in my mind whether or not a person would be liable for the State license plus fifty per cent for the County and then if an office or place of business is maintained in another county the amount would be as mentioned in Schedule.

"Under Chapter 6 Schedule 158.1 there is a provision for issuance of tags on monthly basis for New Automobiles only. Schedule 158.5 deals

with trucks and does not set out in this Schedule whether or not same are to be issued on monthly basis on NEW trucks. The Schedule referring to issuance of tags on monthly basis reads: 'That for new automobiles only' and under Schedule 158 the definition of an automobile is as follows:

'Every Motor Vehicle as herein defined except motorcycles.'

"Should tags on NEW TRUCKS or any other New car other than a PRIVATE car be issued on monthly basis?"

Answering your questions in detail, I advise:

Schedule 33. As quoted by you, this provides **one** state license of $100.00 and a county license of $5.00 in each county in which such wholesaler of tobacco does business.

Subsection b of Section 350 levies a county license of fifty per cent of the state license "except as herein otherwise provided." In my judgment, the specific terms of Schedule 33 govern over this general provision and the proper amount collectible by you is $105.00.

It might not be amiss to call to your attention that those paying the license levied by Schedule 33 or the license permit required by Schedule 159.16, are expected from the license levied by Schedule 147, known as transient vendor's license.

Schedule 44. The same reasoning applies as to this schedule. The amount payable to the county is specifically provided, and governs the general provision of Section 350 (b). The foregoing applies to the county license.

The provision as to State license is however, different from Schedule 33. In Schedule 33, the requirement was for **one** State license. In Schedule 44, there is both a state and county license on "each place of business." This Schedule does not change the general rule except it definitely limits the amount payable to the county. In your last question you ask, should tags on new trucks or any new motor vehicle, other than a private car, be issued on a monthly basis? You call my attention to the definition of "automobile" contained in Schedule 158 and also to Schedule 158.1 in which the provision for issuance of license on a monthly basis is provided.

I call your attention to the other provisions of Schedule 156 containing specific definitions of "Motorcycle," "Jitney Bus", "Motor Truck", "Trailer", "Small trailer", "Semi-trailer" and "Pole or Pile Dolly". A motor vehicle is defined as "Every vehicle as herein described which is self propelled or which is drawn by a self propelled vehicle." "Automobile" is defined as "Every motor vehicle as herein defined except motocycles."

While this is a general definition, particular types of motor vehicles are specifically defined and it is my opinion that whenever in chapter 6, a particular kind of motor vehicle is named the reference is to such vehicle as particularly defined by Schedule 158.

Schedule 158.1, as amended, reads as follows:

"SCHEDULE 158.1: 'Private cars': The following license and registration fee shall be charged on automobile and motor cars kept for pri-

vate use: (a) For each automobile or motor car weighing 2000 pounds or less, Five Dollars ($5.00). (b) For each automobile or motor car weighing more than 2000 pounds and not exceeding 2500 pounds the license shall be Nine Dollars ($9.00). (c) For each automobile or motor car weighing in excess of 2500 pounds and not more than 3250 pounds, the license shall be $13.00. (d) For each automobile or motor car weighing in excess of 3250 pounds, the license shall be Eighteen Dollars ($18.00). Provided, however, that for new automobiles only these licenses shall be purchased on a monthly declining basis of one-twelfth (1/12) or for each month of the tax year and that the purchaser shall only buy a license for the then remaining months of the tax year. In figuring the license on a one-twelfth (1/12) reduction for each month, the amount of any fraction shall be figured to the nearest ten (10c) cents above the fraction thereof. But in no event shall the price of license tag be less than two dollars ($2.00). (as) Provided, the word 'Weight' for purpose of computing the license tax payable hereunder, shall be deemed to mean the weight of the vehicle including weight of the bumpers, spare tire, horn, truck and tools, and all equipment customarily or generally used, whether same be installed on the motor vehicle before shipment or delivery by the factory, or before or after delivery by the automobile dealer. (a) For each electric automobile, other than truck, Twelve Dollars ($12.00). (f) For each automobile propelled by steam, Eighteen Dollars ($18.00). (g) For each motorcycle, Four Dollars ($4.00). (h) For each motorcycle with side car attached, Five Dollars ($5.00). Where the motorcycle is acquired or brought into the State on or after January 1st or is not used prior to January 1st, the license shall be Three Dollars ($3.00). Where the motorcycle is acquired or brought into the State on or after April 1st, or is not used prior to April 1st, the license shall be Two Dollars and a half ($2.50). Where the motorcycle is acquired or brought into the State on or after July 1st, or is not used prior to July 1st, the license shall be Two Dollars ($2.00). (b) Provided, however, that the license tags for such automobile or motorcycle shall remain with such automobile or motorcycle for the remainder of the current tax year, and that before any private automobile or any motorcycle shall be used on any public highway the proper license tag therefor must be procured and securely attached to the rear end of the automobile or motorcycle, said tag to be securely attached right side up with the number thereof in an upright position and the number thereof plainly visible."

It will be noted that this entire Schedule refers to and applies to "automobiles and motor cars kept for **Private** use." It is so termed, the method of payment is different and the method of determining the proper tag is different from other sections. It is my judgment that this is a special schedule applying only to automobiles kept for private use, and therefore in the absence of other provisions, the only new motor vehicle for which tags can be purchased on a monthly declining basis are those kept for private use.

Is there any provision applying to other types.

Schedule 158.2 levies a license on Jitney buses. Clearly this is Jitney Bus as defined in 158.

Schedule 158.3 levies a license on automobiles etc. used for hire—based on seating capacity. Manifestly even the basis for license is different from 158.1.

Schedule 158.4 levies licenses on each hearse or ambulance.

Schedule 158.5 states "for each **motor truck** the following license based on the manufacture's (sic.) rated capacity stamped on the truck shall be charged."

"Motor truck "here means motor truck as defined by Section 158. To illustrate further its complete separateness from 158.1 the license is payable on a different basis, and the amount conditioned (Schedule 158.6 and 158.7) on whether the gasoline used was subject to the Alabama gas tax and also by the nature of the tires used.

In none of these sections applying to special types of motor vehicles is there any provision for taking out license on new vehicles on a monthly graduated basis except Schedule 158.6 which applies in my judgment only to automobiles kept for private use.

We must therefore, look to the general provision to determine the liability for license for motor vehicles for other than private use. This is found in Schedule 158.13, which provides in part as follows:

> "158.13 (a) One-half of the license herein provided for shall be paid plus One Dollar ($1.00) where the motor vehicle is acquired or brought into the State on or after April 1st of any year, or is not used or operated between the period from October first through March thirty-first following the payment of the registration fee or license tax on motor vehicles or trailers shall be evidenced by the delivery to the party paying the same of numbered license tags which shall be placed in a conspicuous place, in an upright position, right side up, on the rear of the automobile, when a semi-trailer truck is operated, one tag on the rear of the semi-trailer."

It is, therefore, my opinion that all types of motor vehicles subject to license except new automobiles kept for private use are required to take out full years license if used or operated between October 1 and through March thirty-first of any fiscal year but if not operated until after March 31, one half the yearly license plus one dollar shall be paid. This applies to all types of motor vehicles except new automobiles kept for private use and motorcycles, for which special provision is made.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 29, 1935.

Hon. W. B. Riley,
County Supt. of Education,
Tuskegee, Alabama.

Statutes—Act No. 300 approved September 2, 1935 establishing a uniform budget system by each county and city school system of the State, repeals all laws general, special or private in conflict therewith.

Opinion by Assistant Attorney General Bibb.

Dear Sir:

I wish to acknowledge receipt of your letter of September 27, 1935, which is as follows:

"A local budget bill for the County Board of Education of Macon County No. 103, House No. 238, by Bridges was passed by the Legislature and approved by the Governor in June of this year. A general budget bill No. 300, Senate Bill No. 351 by Stephens was later passed and approved by the Governor.

"Will you please render for me an opinion as to whether or not the local budget bill was repealed by the general budget bill. Will greatly appreciate an early opinion as my official acts beginning the fiscal year October 1 next must be based upon whichever budget law I am to operate under."

The title to Act No. 300, approved September 2, 1935, commences as follows:

"To establish budget system and provide for the operation of a budget for each county and city school system in this state; * * * "
Section 1 of the said Act No. 300 is as follows:

"Section 1. BUDGET SYSTEM ESTABLISHED FOR COUNTY AND CITY SCHOOL SYSTEMS.—There is hereby established a budget system for the public schools of each county and city in the State for the purpose of promoting economy and efficiency in the finances of said public schools."

Section 16 of said Act No. 300 provides as follows:

"Section 16. All laws and parts of laws, general, special, or private, in conflict with the terms and provisions of this Act are hereby repealed."

From the above quotations from the title and body of said Act No. 300, approved September 2, 1935, it is my opinion that the Legislature thereby intended to establish a uniform budget system of each county and city school system in the State and to repeal any and all local or special laws to the extent that such local or special laws conflict with the provisions of this later uniform enactment. It is, therefore, my opinion that this Act No. 300 has the effect of repealing Local Act No. 103, requiring the preparation and execution of a budget, etc., by the County Board of Education of Macon County, to the extent that the provisions of said Local Act No. 103, are in conflict with, and cover the same field as is covered in the said General Act No. 300, approved September 2, 1935. It is therefore, your duty to comply with the provisions of Act No. 300.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 30, 1935.

Mrs. M. H. Hurt, Clerk,
Board of Revenue of Macon County,
Tuskegee, Alabama.

When the language of the statute is plain without ambiguity, the statute must be followed and an attempt at evasion of such statute is frowned upon by the Courts; Where a Local Act says that Boards of Revenue may purchase material, tools and supplies up to $50.00 in value, without advertising for bids, and several purchases are made on differ-

ent dates of the same product or material, each for $50.00, shows on its face to be an evasion of the law and the Boards of Revenue and Courts of County Commissioners would be without authority to audit and pay for same.

Opinion by Assistant Attorney General Haynes.

Dear Madam:

I have your letter of recent date, in which you request my opinion as follows:

"This Legislature enacted a Local law for Macon County, entitled:

No. 105 H-240 Bridges, To establish a budget, etc.

"Section 8 of this Act reads as follows:

" 'That no purchase, or contract to purchase, any road or bridge materials, tools, machinery, supplies or equipment, or other materials, tools, machinery, supplies or equipment, or any other materials or supplies of any kind or nature, for the use of the County by the officials thereof, shall be made, or any contract for the construction, maintenance or repair of any bridge or road let, if the amount involved or the value thereof exceeds $50.00 except to the lowest bidder.'

"Would it be a violation of this Act if an official, without advertising for bids, should buy material one day for less than $50.00, and then again on the following days, buy materials of like kind and like prices, provided each days purchase shall be for less than $50.00?"

If the purchases such as you describe are made for the purpose of evading the law, they are invalid and should not be paid by the County. In other words, you cannot indirectly violate the spirit and the legislative intent of a law.

It appears to me for the purchase or contract to be made as you detail, shows on its face to be an attempt to evade the Local Act referred to above, which, if done, would make the purchase or contract invalid and the Court of County Commissioners would be without authority to pass such claims and order them paid.

"The office of the Court is to construe the statute so as to suppress mischief; to prevent evasion and change and add force to the remedy according to the true intent of the makers of the Act for the public good. If the language of the statute is plain and unmistakable, there is no reason for interpreting any other meaning into it than is made plain by the statute itself."

Sunflower Lum. & Co. v. Turner Supply Co., 158 Ala. 191, 79 Am. Dec. 236, 28 L. R. A. 564.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 30, 1935.

Hon. Henry S. Long, Pres.,
State Tax Commission,
Capitol.

Attention Mr. W. W. Ramsey:

Where person owning an automobile does not actually operate the same on the public roads, streets and highways of the State, he is not subject to a penalty for delinquency in taking out license unless he actually operates such vehicle prior to the time he secures such license.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 24 in which you state:

"I respectfully request your opinion as to date of automatic penalties on automobile license where not operated on highways of Alabama after delinquent date given in Revenue Code.

"For example, if John Doe owns an automobile and does not operate it on the highways of Alabama until December 1st, or later date, at which time he makes application for license tag before operating, should the Probate Judge issuing the license tag collect the penalty in the above case?"

In reply, I beg to advise that there is no liability for license on automobile until the same is actually used on the pubic highways. Therefore, a person is not delinquent until there is actual use on such public highway. Specifically answering your question, a person would not be subject to a penalty if he secured the license at any time after October 1 and prior to the date he actually operated such vehicle on the public roads, streets or highways. This is a question of fact for the issuing authorities to determine.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 30, 1935.

Hon. J. F. Laseter,
Judge of Probate, Barbour County,
Clayton, Alabama.

License—Persons selling turpentine, oil, aspirin or other staple drugs from a car or truck to retailers for resale are "transient dealers" as defined by Schedule 147, Section 348, Chapter 1, Article XIII of the Revenue Act of 1935 and are required to pay the license tax provided for in this Schedule.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of October 8, 1935, which is as follows:

"Will you please give me an opinion on Schedule 147 of New Revenue Law. Can a person selling to merchants from a car or truck sell turpen-

tine, oil, aspirin or other staple drugs to merchants for resale? I am of the opinion that if he sold the above mentioned items he would have to procure a license under Schedule 104, which would cost him $30.00 for the State and $5.00 for each county in which he travels."

"Transient dealers" as defined by sub-paragraph (b) of Schedule 147, Section 348, Chapter 1 of Article XIII are "all persons acting for themselves or as an agent, employee, salesman or in any capacity for another, whether as owner, bailee or other custodian of goods, wares and merchandise, and going from person to person, dealer to dealer, house to house or place to place, and selling or offering to sell, exchanging or offering to exchange, for resale by a retailer, any goods, wares and merchandise." In my opinion, a person selling turpentine, oil, aspirin or other staple drugs to merchants from a car or truck for resale, comes clearly within this classification, and, as such, is a "transient dealer."

Under Schedule 147, supra, a "transient dealer" must pay an annual license tax to the State of $30.00 and a license tax of $5.00 to each County in the State in which he does business. Therefore, in my opinion, persons selling turpentine, oil, aspirin or other staple drugs from a car or truck to retailers for resale are "transient dealers" as defined by Schedule 147, supra, and as such, are required to pay an annual license tax to the State of $30.00 and a license tax of $5.00 to each county in the State in which he does business, which is the license tax provided for in Schedule 147, supra.

I am not in accord with your view, as expressed in your letter, that a person, such as the one described in your letter would have to procure the license provided by sub-paragraph (b) Schedule 104, Section 348, Chapter 1, Article XIII. In my opinion, this Schedule applies to itinerant vendors or peddlers of medicine or other articles of like character, and not to persons who sell such articles only to retailers for resale.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 30, 1935.

Hon. Eugene B. Henry,
Commissioner of Licenses,
Jefferson County,
Birmingham, Alabama.

Person paying the license levied by Schedule 79 is not liable for the license levied by Schedule 82 of the 1935 Revenue Act.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 23, 1935, in which you make the following inquiry:

"Where a license has been taken under Schedule 79.—Compilation of License or Privilege Tax effective October 1st, 1935—would a person also be required to take a license under Schedule 82?

"I am of the opinion that if a license is taken under 79, one would not be required under 82. Please advise me at your very earliest convenience, your opinion in this matter."

In reply, I beg to advise that by the specific terms of Schedule 82, it is provided that this schedule shall not apply to regular laundries which have paid the license on laundries levied by this Act. The license on laundries is levied by Schedule 79 to which you refer. It is, therefore, my opinion that if a license is taken out under Schedule 79, there is no liability under Schedule 82.

Your letter also refers to Schedule 147. Schedule 147 levies a license on transient vendors who sell to retailers for resale. While there are detailed definitions set out in the statute, the foregoing is a statement of the general purpose and effect as I construe it of this schedule. It is my judgment that a laundry is not engaged in such a business nor would a person renting or supplying towels, etc., from whom a license is required by Schedule 82 come within the terms of Schedule 147. It is my understanding that neither of these businesses sell to a retailer for the purposes of resale.

I call your attention to the last proviso of Schedule 79, which states: "Provided further that a person not having a place of business within the State of Alabama where such work is actually performed shall pay a license of $25.00 for the reception or collection of laundry." As all licenses, generally speaking, are levied on a county unit basis, it would appear that this proviso applies in every county where operations of this sort are carried on other than in those counties where the work is actually performed.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 30, 1935.

Hon. Howell Turner,
Secretary of State,
The Capitol.

How fee for commission as a Registrar may be refunded.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of recent date in which you state:

"On October 9, 1935, you rendered an opinion that it was not necessary for a member of the Board of Registrars to receive a commission in order to enter upon his duties as such official.

"Many of them, between October 1st and 9th, had requested a commission and paid the $1.00 fee therefor. The said money is held in my office awaiting certification to the Treasury of the State; or, if you hold that it can be returned to the payer, advise under what condition I may return it."

In answer to your inquiry of October 14, 1935, with reference to refund of $1.00 paid by members of Board of Registrars for a commission, it is my

opinion that it was not necessary for such members to request and receive a commission before entering upon their official duties. (See opinion under date of October 9, 1935, to Judge Chas. E. McCall, State Auditor).

It is, however, my opinion that you were authorized to issue a commission to the members of the Board of Registrars when requested and $1.00 fee paid therefor.

Should those who paid the $1.00 fee not desire to retain the commission, upon request for refund, you are authorized to return same, but the commission itself must be returned immediately to your office.

Should they desire to keep the commission, they may do so, but under such conditions you would then certify the fee into the State Treasury. In other words, the fee cannot be returned unless the commission is sent back to you.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 30, 1935.

Hon. T. L. McKee,
Tax Collector, Chilton County,
Clanton, Alabama.

Tax Collectors: Should collect items as shown by abstract certified by the Assessor.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter stating:

"Within the past few days my predecessor-in-office, and just prior to October 1, noted in the column in the Tax Abstract a fee of 50c for the Tax Assessor on many assessments made subsequent to December 31, 1934. From an examination of the tax list or assessment sheets I do not find that this fee was entered on this assessment or tax list. The only entry I find on the tax records of this fee is, as stated, in the right hand column of the Tax Abstract.

"This fee is provided by Section 153, page 108 of the Revenue Laws of 1929, which Section in substance provides that the fee shall be added to his tax list and collected with the taxes.

"As those fees are in question daily, I will appreciate your advising me promptly whether or not in collecting taxes these fees should be included in the amount collected."

Section 52 Acts 1919, p. 282 (Rev. Comp. 1929, see 153) to which you refer, provides:

"Demand of taxpayers failing to make return of taxable property.—After the thirty-first day of December in each year, the assessor shall in person or by deputy, make a demand upon all taxpayers who have failed to make return to him for a list of their taxable property, and such demand may be made by written notice left with the taxpayer at his resi-

dence or place of business, or sent postpaid by registered mail, with return receipt demanded, to the taxpayer's last known place of residence and it shall be the duty of such taxpayer to return such list to the assessor by the first Monday in February following. For making this demand the tax assessor shall be entitled to a fee of fifty cents to be paid by the taxpayer, which shall be added to his tax list and collected with the tax."

From the foregoing it is clear that the Assessor must make the demand upon the delinquent taxpayer and is entitled to the demand fee therefor.

Section 168 of the 1929 Revenue Compilation provides:

"Book of assessments examined and corrected by tax commission; certificate showing taxes due; warrant for collection of taxes.—After the book of assessments has been completed as herein provided, the State Tax Commission or the agent or assistant thereof, shall certify on the books of assessments that the same has been examined and corrected by him by comparing the book of assessments with the tax returns showing final valuations, both as to items of property and amounts of assessments, and that the amount of State tax is $.....(here give amount) ....., the amount of county taxes is $.....(here give amount) .....the amount of special taxes is $.....(here give amount) ....., specifying the total amount of each of such taxes, and such certificate is to be the warrant to the tax collector of the county to proceed to collect such taxes in the manner directed by law."

Sections 169 and 170 treat of same subject matter and Section 170 specifically provides for the inclusion of the fees of the Assessor.

As the "certificate of the Assessor is the warrant for the Collector to proceed to collect the taxes," I am of the opinion that such fee being on the abstract as certified, it is the duty of the collector to collect same.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 30, 1935.

Hon. Gaston Scott, President,
Highway Department,
State Capitol,
Montgomery, Alabama.

Vehicles which are a part of road machinery, are not prohibited under quoted sections of Act 58, 1932, Legislature.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of September 16, 1935, in which you request my opinion as follows:

"Act No. 58 of the General Acts of the 1932 Legislature with reference to the regulation of trucks, trailers and semi-trailers and particularly with reference to Trailers, reads as follows:

" 'Trailers: No person shall operate any trailer on any highway.'

"A definition of 'Trailer' as provided in said Act is as follows:

" 'Trailer. Means any vehicle designed to be drawn by a motor-truck or truck-tractor, but supported wholly upon its own wheels and intended for the carriage of freight or merchandise and with a load capacity of over 1,000 pounds.'

"Several contractors and owners of equipment, as well as manufacturers of equipment contend that Asphalt Distributors which are tanks on four wheels drawn by a tractor and other road machinery on four wheels should be classed as road machinery and not four wheel trailers. There is also a skeleton trailer used to transport shovels which is a part of the equipment, but when the shovel is at work, it is dismounted from the trailer. I am handing you herewith a cut of this.

"I will thank you for your opinion as to whether or not such equipment should be classed as a four wheel trailer under the meaning of the above Act."

I am of the opinion that the vehicles mentioned are not included within the meaning of the Act. The "10-B Trailer," a picture of which you enclose, is designed for use solely in transporting an excavator, and in reality it is a part of the excavator. It apparently could not be used for the transportation of anything else. The other vehicles which you mention are apparently a part of the road machinery.

I am of the opinion, therefore, that they are not included among the vehicles prohibited.

Very truly yours,
A. A. CARMICHAEL,
Attorney General.

October 30, 1935.

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

H. B. 609, No. 190, approved July 8, 1935, construed.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion which reads as follows:

"1. If witnesses or Jurors have actually been paid by Jackson County, can the county be reimbursed?

"2. If a witness or Juror has been paid by Morgan County and the same charged to Jackson County, can this appropriation be used to reimburse Morgan County as an unpaid claim against Jackson County?

"3. If this appropriation can be used to reimburse Morgan County for an unpaid claim against Jackson County, should not the amount be paid to the Clerk of Morgan County to be disbursed by him?"

Your first question must be answered in the negative. The act is clear and unambiguous in stating that the money appropriated is for the payment of "unpaid costs and fees of jurors, officers and witnesses etc." The word "payment" is used throughout the act, nowhere therein may be found the word "reimbursement." The law is well settled that though other meanings may be possible of inference, the clearly expressed meaning of a statute and the intent of the legislature must prevail in its construction.

City of B'ham vs. So. Express Co., 164 Ala. 529, 531; White vs. City of Decatur, 25 Ala. App. 274, 144 So. 872.

Accordingly, as under the facts detailed by you, the witnesses or jurors have actually been paid by Jackson County, such County is not entitled to be reimbursed for its outlay.

Your second inquiry must likewise be answered in the negative. I am assuming, for the purpose of this opinion, that the claims paid by Morgan County and charged to Jackson were paid by the former county voluntarily and upon its own initiative.

Under the provisions of the Code of Alabama, 1923, (No. 5587) when a prosecution begun in one county is transferred by change of venue to another county "all fines and forfeitures go to the county in which the indictment was found, and judgment must be rendered accordingly; and the fees of all jurors and witnesses, on being properly certified by the clerk of the court to which the trial is removed, are a charge on the county in which the indictment was found, in like manner as if the trial had not been removed."

Under this section, claims of witnesses, jurors, etc., when properly certified, are payable by the county in which the indictment was found, and not by the county to whose courts the trial was transferred; and, if the latter county pays them, it is a voluntary payment which will not constitute it a creditor of the county in which the indictment was found. I call your attention to Greene County vs. Hale County, 61 Ala. 72, which decides the identical point here in issue.

The foregoing obviates the necessity of answering your third inquiry.

Very truly yours,
A. A. CARMICHAEL,
Attorney General.

October 30, 1935.

Hon. W. H. Butler,
Judge of Probate,
Madison County,
Huntsville, Ala.

Notice, Publication of—Act No. 370 approved September 7, 1935, construed.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion dated October 9, 1935, as follows:

"Please give me your interpretation of how legal advertising originating in the Probate Court of Madison County will be affected by House Bill 506, amending Section 9237, of the Code of Alabama 1923 approved September 7, 1935?

"In case of newspapers edited in one county, printed in another county and then mailed in the same county in which they are edited, how much of the printing must be done in the County in which it is edited in order to make the advertising legal?

"What is your opinion as to the meaning of the following: "Published in the County in which the advertising is published" quoted from the copy of the bill."

The statute requires that the publication of legal advertisements shall be made in newspapers "printed in whole or in part and published in the County in which the advertisement is published * * * ." It does not require that any particular percentage or proportion of the printing shall be done in the county in which the advertisement is published but some part of the printing must be done in such county. As used in the Act, the word 'print' means to do the typesetting, press work, etc., necessary to the publication of the newspaper. See definition of "print" in Webster's New International Dictionary. The meaning of the phrase in the Act "published in the county in which the advertisement is published," is made clear when the distinction in meaning between "print" and "publish" is kept clearly in mind. In an explanatory note under the word "publish" in the dictionary cited supra, it is said: " 'Print' and 'publish' are often confused. A book may be printed without being published; it is published only when it is offered for sale or put into general circulation."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 31, 1935.

Hon. G. W. Robertson,
Judge of Probate,
Baldwin County,
Bay Minette, Ala.

A person, firm, association or corporation must be domiciled in Alabama for one year before it can be granted a resident license for trapping, etc.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 8, 1935, in which you request my opinion as follows:

"Section 18 of the trapping law approved on September 9th, 1935, requires a non-resident dealer to procure a license and pay therefor a license fee of $300.00 and defines a non-resident as:

'A person, firm, association or corporation who or that which has not been continuously domiciled in this State for one year prior to October 1st, or the year for which such license is required.'

"A corporation has within the past few days been organized in this county and has applied for a resident's license and under the phraseology of the Act I don't know whether to issue such license as to a resident dealer.

"The corporation is unquestionably a domestic corporation and it is insisted that as such they are entitled to a resident dealer's license and hence I am writing to you because before issuing the license I desire your interpretation of the law. If the license is not issued the issue will, I feel sure, be presented for court determination and I would therefore like to have your answer at as early a date as convenient."

Your request for an opinion is based on the following paragraph of Section 18 of an Act approved September 9, 1935, which is as follows:

"A non-resident as herein mentioned is defined as any person, firm, association or corporation who or that which has not been continuously domiciled in this State for one year prior to October the first of the year for which such license is required."

I construe where the above paragraph says domicile in this State, if this is an individual, it means that he must have resided here one year. If it is a firm or association, it must have been organized one year. If it is a corporation, it must have been incorporated for one year. Domicile is defined by Encyclopedia Law Dictionary (Words and Phrases) as "The place where a man has his true, fixed and permanent home and principal establishment, and to which whenever he is absent, he has the intention of returning."

Also **Mucky vs. Roberson,** 211 Ala. 579. Therefore, I construe the language of the statute quoted above for the purpose of this Act, to mean that such corporation or association must have been organized for one year before it can be considered domicile in Alabama. Otherwise, a corporation, firm or association could be formed in Alabama as a Domestic corporation by residents or people who reside in another State and, therefore, defeat the purpose and intent of this Act.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 31, 1935.

Hon. Hamp Draper,
Associate Member,
Board of Administration,
Capitol.

Where two or more persons are jointly indicted, jointly tried and jointly convicted, there is but one cost bill and it should be paid by the State under Section 3667, Code of Alabama, 1923 when sentenced to the penitentiary even though one of the defendants may be an escape.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 7, 1935, in which you request my opinion as follows:

"This Department respectfully requests your attention, in the effect of an opinion, in the matter we are outlining below. The facts outlined were contained in transcript of minutes received by this Department and signed by E. J. Johnson, Clerk Cherokee County:

"In Circuit Court of Cherokee County Alabama Ed Rogers, Sam Rogers and Henry Rogers were indicted and tried jointly on a charge of murder in the first degree. August 18th, 1918, which was the trial date, Ed and Sam Rogers were convicted of murder in the second degree and sentenced to fifteen years imprisonment in the penitentiary. Henry Rogers was acquitted.

"Ed Rogers and Sam Rogers did, on August 18, 1918, appeal the judgment and sentence of the court to the Court of Appeals of Alabama. Pending this appeal Ed and Sam Rogers escaped confinement in jail in Cherokee County. Recently Ed Rogrs was apprehended and sent to Kilby Prison to begin serving his sentence. Sam Rogers is still at large.

"Question: Is it legal and permissible for this Department to pay all or any part of the costs in this case until both convicted parties have been received in the Penitentiary?"

It is my opinion the costs should be paid. These defendants were convicted for murder in the second degree and were sentenced to the penitentiary. Of course, in penitentiary cases, the sentences do not carry the costs. Defendants are sentenced for costs only in misdemeanor cases where the sentence is to hard labor for the county. The parties were jointly indicted, jointly tried and jointly convicted. There was but one trial. Of course, they were separately sentenced but this could make no difference. So when it comes to paying the costs, the state pays only one bill of costs though there were two defendants convicted. You will note Section 3867, Code of Alabama 1923 says, among other things: "Whenever the defendant is convicted, and sentenced to the penitentiary the following items of costs in the case shall be paid out of the convict fund." This section designates just what costs the state pays on a conviction and sentence to the penitentiary. So, as stated above, I am of the opinion that these costs should be paid not in excess of $250.00, the amount fixed by Section 3668, which is as follows:

"3668. Costs shall not exceed two hundred and fifty dollars.—The whole costs paid in any one case shall not exceed Two Hundred and fifty dollars."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 31, 1935.

Hon. J. Lee Smith, Chairman,
Commissioners Court, Chilton County,
Clanton, Alabama.

(1) Where license is paid through error of Probate Judge, same may

be refunded under Provisions of Sections 375 and 376 of Revenue Act of 1919.

(2) Where Probate Judge has issued a certificate, he may recall same before it is acted upon.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"M. Lande was engaged in the general mercantile business in the City of Clanton, Chilton County, Alabama, operating under the firm and style of "The Leader" and during the year 1930, a fire occurred in his regular place of business and at this time said merchant had paid all state, county and city licenses for the year for the privilege of selling merchandise. After said fire, which damaged a great portion of the merchandise, the said M. Lande necessarily removed his damaged stock to another location, but in the City of Clanton, and advertised for sale said damaged merchandise, which was damaged, at reduced prices. M. Lande in the statement he makes states that no new merchandise was added to the stock on hand at the time of the fire. The License Inspector demanded of M. Lande that he take out a license to transact business as a fire sale under Schedule 16 of the Revenue Code of 1929, as shown on page 227 of said Code. Under protest this demand was complied with and license issued to him the same amounting to $150.00, $100.00 for the use of the State and $50.00 for the use of the County.

"Presuming that a license was paid through a mistake or error on the part of the Judge of Probate, will you please advise me whether or not this merchant is entitled to a refund from Chilton County for the county's part of these licenses so paid. This application for refund was filed by M. Lande on March 30, 1935.

"I submit to you opinions of the Attorney General 1918-1920, page 628, 1930-32, page 201."

Accepting your premise that the license was paid through error of the Probate Judge, the Statutes, Sections 375 and 376 of the Revenue Act of 1919, provide for refunds of such licenses.

However, in the case you set out, I call to your attention the recent case of Kartus v. State, 162 So. 333-558 (Advanced Sheets No. 4) which cites and distinguishes the opinion in Jones v. State, 149 So. 855. I might say that following the Jones case a number of certificates for refunds were made. Since then, however, the Kartus case has been decided and if your certificate was based on an error of law, it may be that you will wish to recall it, since this last decision. As the Probate Judge issues the certificate, I am of the opinion that he can recall same, before it is acted upon, if he thinks his original certificate was improperly issued.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 31, 1935.

Hon. Fred H. Price, Clerk,
Circuit Court of Autauga County,
Prattville, Alabama.

Fines assessed for reckless driving are payable in money only under Section 4038, Code of Alabama, 1923.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of September 27, 1935, in which you request my opinion as follows:

"Is the fine for reckless driving payable in money only or can it be paid with script which has been registered against the Fine and Forfeiture Fund of the County?"

I call your attention to Section 4038, Code of Alabama, 1923, which is as follows:

"All fines and forfeitures shall be paid in money, and shall go to the county in which the indictment was found, or the prosecution commenced, unless otherwise expressly provided; and judgment therefor must be entered in favor of the State, for the use of the particular county."

The above Section is Section 6888, Code of Alabama, 1907, which is as follows:

"All fines go to the county in which the indictment was found, or the prosecution commenced, unless otherwise expressly provided; and judgment therefor must be entered in favor of the State, for the use of the particular county."

You will note as it appears in the Code of 1907, there was nothing said about how fines "assessed against defendants who are convicted," should be paid in, but as this Section appears in the Code of 1923, supra, I find the following: "shall be paid in money." Therefore, it is my opinion the fine for reckless driving is payable in money only as under Section 4038, supra, all fines now are payable in money "unless otherwise expressly provided," and I am unable to find where this particular fine is otherwise provided for.

I call your attention to an opinion of this office written July 23, 1935, to Hon. Ben F. Burch, Ex-Sheriff of Russell County, Seale, Alabama, Book 5-A, p. 233.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 1, 1935.

Hon. W. E. Butler,
Judge of Probate,
Huntsville, Ala.

Whenever a paper is presented to the Judge of Probate for record, it is not his duty to pass on whether or not the paper should be recorded. This is the duty of the party offering it, and when he does file and re-

cord the same, he is entitled to payment for such services at the regular price.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 10, 1935 in which you request my opinion as follows:

"On January 31st, 1935, the Lee Tire & Rubber Company of Conshohocken, Pa., mailed to me with the request that I record two consignment agreements and supplementary papers similar to the form attached.

"I recorded these papers as per their request and sent them a bill for the recording fees amounting to $4.70, which they have never paid.

"They now write to me that their attorney contends that consignment agreements do not need to be recorded in Alabama; and, consequently, they have not paid me for this work. My viewpoint is that when a paper is offered for recording with a whole lot of legal terminology contained therein that the safest thing for me to do is to file as per request collecting the recording rate therefor of .15 per hundred words instead of holding papers aside pending legal research to see whether or not there will be any particular benefit to the applicant in filing same for record. My opinion has been that it would be a whole lot worse for me to misconstrue one document and leave it off the records than it would be to record any number of papers that actually might not have been legally necessary to record.

"Please give me your opinion as to whether or not I am entitled to the recording fees on these particular papers mentioned."

I am of the opinion that to record the contract, a copy of which you inclosed, could not add anything to its validity as I know of no law that requires such papers to be recorded. But this could not affect you one way or the other. It is up to the party offering a paper for record to decide. All you are called upon to do is to carry out his instructions and if he desires it filed and recorded, it is your duty to do so, and the recording fee becomes a charge so far as you are concerned against the party filing the same and you are entitled to the fee provided by the statute. It is not your duty to pass on the necessity of its being filed and recorded. However, I might call your attention to an Act approved September 9, 1927 (General Acts 1927 page 496), which broadens very much the scope to be covered in the recording of all character of contracts, sales, etc. And while I am doubtful about its covering the contract you have under consideration, it is possible that it does. However, this does not change what we have said above, but if anything it strengthens it.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 1, 1935

Hon. E. A. Veitch, Deputy Commissioner,
Commissioner of Licenses,
Jefferson County Court House,
Birmingham, Alabama.

Corporations using gasoline pumps for private use, but supplying gasoline to employees at cost, are liable for privilege tax on pumps.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I acknowledge receipt of your letter of October 10, 1935, in which you ask:

"I would like to have an opinion in reference to privilege tax on gasoline pumps maintained by large corporations, as in the case of the Woodward Iron Company.

"The Woodward Iron Company has several pumps that they use to refuel their own trucks and cars, and do not operate for profit, they do however, charge gas to some special employees at cost price.

"Please render your opinion immediately as to whether they will have to pay this tax or not."

I wish to call your attention to an opinion by this office on February 27, 1932, to State Tax Commission, in which your question was answered. This opinion was construing Section 20, Acts 1927, p. 139, and held that the filling stations or pumps were not exempt from the payment of the license required by law.—Biennial Report of Attorney General, 1930-1932, p. 730.

As Section 20, Acts 1927, p. 139, is similar to Schedule 67 of the 1935 Revenue Law, I am, therefore, of the opinion that the pumps operated by the Woodward Iron Company are not exempt from the payment of the license required by law.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 1, 1935.

Hon. L. H. Montgomery,
Judge of Probate,
Eutaw, Alabama.

Under the General Acts of 1933, page 203, the county surveyor is required to make a bond of $1,000.00, but must pay the premium himself.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 11, 1935, in which you request my opinion as follows:

"In the opinions of the Attorney General 1932-1934 on page 45 the Attorney General rules that the County should pay the bond of the County Surveyor.

"In General Acts of the Legislature 1932 Section 15 on page 286 states that the premium on the bond of the County Surveyor must be paid by the person making such bond without expense to the county.

"Please advise me which of these governs in the matter of the payment of the premium of the County Surveyors bond."

You are correct about the opinion of the Attorney General in 1932-1934 Biennial Report, page 45. This opinion was correct at the time it was written, but since then the law as to county surveyors has been changed by an act approved April 20, 1933 (General Acts 1933, page 203). I call your attention to Section 14 of said Act which is as follows:

"Section 14. The official bonds of Justices of the Peace, Notaries Public and Ex-Officio Justices of the Peace, Notaries Public, Constables and County Surveyors shall be, as to each office, in the sum of $1,000.00 the premiums on said bonds to be paid by the person making such bond and without expense to the County."

You can see from the above that the county surveyor must make bond in the sum of $1,000.00 but must pay the premium himself.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 1, 1935.

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Tax Assessors and Tax Collectors—Maximum compensation limitations of the Revenue Act of 1935 (Sections 22 and 161A) applicable to period in which fees and compensations are actually earned.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of September 6, 1935, in which you request my opinion as follows:

"In view of the so-called Sparks Amendment to the Constitution of Alabama (Article XXIV) and the Sections 23 and 161A of the Revenue Act of 1935, what is the maximum compensation allowed tax assessors and tax collectors for monies received during the tax year 1935-1936?"

Relative to the Tax Assessor, I am of the opinion that the maximum net compensation allowed for the tax year 1935-1936 would be $6,000.00 per year as set out in the Sparks Amendment.

In an opinion of this office rendered to the Tax Collector of Tuscaloosa County on March 6, 1934, it was held that the $6,000.00 maximum limitation of the Sparks Amendment was applicable to the period in which the tax assessor actually earned his fees and compensation and not to the period in which he received same. In other words, he was entitled to the full amount of fees and commissions earned prior to the adoption of said constitutional amendment although he did not actually receive the money until after the

adoption. See also opinion of Attorney General to Judge of Probate of Walker County on.....1935.

The above is likewise applicable to the maximum limitation compensation of $5,400.00 annually set out in Section 23 of the Revenue Act of 1935. Said limitation is applicable to the period in which the tax assessor actually earns his fees and compensation and not to the period in which he receives same.

Relative to the tax collector, I am of the opinion that the maximum net compensation allowed for the tax year 1935-1936, would be governed by Section 161A of the Revenue Act of 1935, viz: $5,400.00 annually. The tax collector earns and collects his fees and compensation simultaneously. The Revenue Act of 1935 takes effect October 1, 1935, the same day the tax collectors began their terms of office. The maximum compensation limitation of $5,-400.00 per annum applies to the period when the tax collector actually earns his fees and compensation but he collects them at the same time.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 1, 1935.

Hon. Theo. Hurt,
Clerk, Circuit Court, Perry County,
Marion, Alabama.

Where a case is dismissed out of court by the presiding judge by quashing the complaint or otherwise, the cost accruing in this case even though the defendant is held to await another prosecution is payable out of the fine and forfeiture fund, under Section 4039, Code of Alabama, 1923, as amended by an Act, approved February 18, 1927, (General Acts, 1927, page 45).

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 15, 1935, in which you request my opinion as follows:

"We have several cases in this Court which were appealed from the County Court of Perry County, charged with 'V. P. L.'

"The Circuit Judge made the following order: 'The Court ex mero Motu quashes the complaint and defendant ordered held to await another prosecution.'

"Please advise me if the Clerk and Sheriff's fees in these cases can be collected out of the Fine and Forfeiture Fund?"

It is my opinion, the cost of this prosecution should be paid out of the fine and forfeiture fund, under Section 4039, Code of Alabama, 1923, as amended by an Act approved February 18, 1927. When the complaint is quashed, this ends the prosecution of the present case as though it was nol prossed. In fact such an order in its last analysis is nothing more nor less than a nolle prosequi which ends the case so far as this prosecution is concerned. It is

true, the defendant can be reindicted or another warrant sworn out for him but this would be a new prosecution and a new case.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 1, 1935.

Hon. Cyrus B. Brown, Chairman,
Board of Revenue,
Montgomery County,
Montgomery, Alabama.

Statutes—Local Law with general application—Act No. 464, S. 480, approved July 17, 1931, (Acts, 1931, page 548) is controlling in Montgomery County on the subject of the Humane Officer, and the Board of Revenue of Montgomery County does not have authority to purchase an automobile or truck for said Humane Officer.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of October 1, 1935, in which you request my opinion as follows:

"Please refer to Act No. 394 found on page 463 of the General Acts of Alabama of 1927, and also Act No. 464 found on page No. 548 of General Acts of Alabama session of 1931, and kindly advise the Board of Revenue of Montgomery County (population 98,671) which the above referred to acts applies to Montgomery County.

"In the event the act found on page 548 of the Acts of 1931 is applicable to this County, kindly advise if the Board of Revenue of this County would have the authority to purchase an automobile or truck for the use of the Humane Officer provided for under the said Act."

Where there is a substantial difference in population, and classification is made in good faith, reasonably related to purpose to be effected and to population and not merely arbitrary, it is a "general law" although applicable to only one political subdivision of the State. **Vaughan v. State, 212 Ala. 258, 102 So. 222.** Act No. 464, S. 480, approved July 17, 1931, (Acts, 1931, page 548) is such an Act, and is applicable to Montgomery County (population 98,671) since its population limits are "75,000 people and less than 110,000 people."

You call my attention to Act No. 394, S. 511, approved August 26, 1927, (Acts, 1927, page 463), which purports to amend the caption of an Act approved October 11, 1920, which attempted to regulate the Humane Officer of Counties "having a population of not less than 85,000 nor more than 175,000," and to amend the body of an Act approved August 23, 1919, which attempted to regulate the Humane Officer of Counties "having a population of not less than 80,000 nor more than 82,000." Subsequent to the passage of the Acts of 1919 and 1920, above referred to, and prior to the passage of the Act of 1927, purporting to amend them, Act No. 213 S. 343, approved August 30, 1923, (Acts 1923, page 220), regulating the Humane Officer of Counties

having "a population of 75,000 people and less than 95,000 people" was passed. In my judgment, the Act of 1923, above referred to, by its population limits applied to Montgomery County. This Act of 1923, as amended by the Act of 1931, above referred to, fixes the population limits at "75,000 people and less than 110,000 people." Therefore, Montgomery County (population 98,671) is still within the provisions of the Act of 1923, above referred to, as amended by the Act of 1931, supra. This act, as amended, is the last expression of the Legislature on the subject of Humane Officers and, in my opinion, is controlling. "Last expression of Legislature is law in case of conflicting statutes on same subject." **Middleton v. General Water Works and Elctric Corp., 25 Ala. Apps. 455, 149 So. 225.**

In this instance, while the Act of 1927, supra, purporting to amend the Acts of 1919 and 1920, above referred to, deals with the subject of Humane Officers in a somewhat limited way, yet the Act of 1923, supra, as amended by the Act of 1931, supra, treats the subject of Humane Officers in a more special or limited way and is, therefore, controlling. "Special provisions relating to specific subjects control general provisions relating to general subjects and things specially treated will be considered as exceptions to general provisions." **Herring v. Griffin, 211 Ala. 225, 100 So. 202.**

Since, in my judgment, the Act of 1923, supra, as amended by the Act of 1931, supra, is controlling, your inquiry as to whether the Board of Revenue of Montgomery County has authority to purchase an automobile or truck for the use of the Humane Officer provided for under the said Act must be answered in the negative. This Act provides for the appointment, defines the duties, and fixes the compensation of the Humane Officer but makes no provision for an automobile or truck for the use of said officer. Therefore, it is my opinion that the Board of Revenue of Montgomery County does not have authority to purchase an automobile or truck for the use of the Humane Officer of Montgomery County.

Very truly yours,
A. A. CARMICHAEL,
Attorney General.

November 1, 1935.

Hon. J. L. Potts,
Sheriff of Lauderdale County,
Florence, Alabama.

Sheriffs.—Sheriff authorized to sell contraband articles under Section 4783, Code of Alabama, 1923.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of September 9th, in which you request my opinion as follows:

"We got a small money safe out of the place of business of a party here in this county containing about one gallon of liquor.

"We had a search warrant for this safe and went to search it and he refused to give us the combination, saying the safe did not belong to him and telling us the owner we went to him and he told us he had forgotten the combination. We just brought safe back with us and got combination later. The owner now wants the safe back.

"We want your opinion as to what we should do in this case. Should we confiscate it and sell it according to court order or should we return it to the owner?"

In reply I wish to refer you to Section 4783, Code of 1923, which reads as follows:

"4783. Receptacles of prohibited liquors, handbags, suitcases, trunks, etc., forfeiture and sale of.—All receptacles of prohibited liquors, such as handbags, suitcases or trunks, which have been seized in law enforcement, and which are in the custody of any person or officer, after conviction of parties from whom seized of the violation of the law in respect thereto, shall be sold after notice of sale by advertisement in a newspaper published in the county for ten days in a daily paper, and the proceeds of the sale be paid into the city treasury, if sale is made by a city officer or custodian of such contraband seized by city officers, or to the law enforcement fund in the state treasury, if made by any other officer or custodian."

If all requirements of the law are met, in my judgment, you would be authorized under this Section to sell as contraband the safe you mention that contained "about one gallon of liquor." Of course, you understand sale must be made in accordance with the requirements of the law governing sale of contraband goods or articles.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 1, 1935.

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Jefferson County—traveling expenses of officers and employees paid under Section 14 of Act No. 173, H. B. 384, approved April 22, 1931 (Acts 1931, p. 247).

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of October 3, 1935, in which you present the following inquiry:

"If a member of the Court of County Commissioners of Jefferson county made a trip or trips away from the County on supposedly County business and, subsequently, turned in a bill for the expenses of such a trip or trips, would the Board of Commissioners have the legal authority to approve such a claim for expenses if the Board itself had not previously authorized the trip or trips made by any particular Commissioner and had not recorded the previous authorization in their Minutes?"

The answer to your inquiry is governed by Section 14 of Act No. 173, H. B. 384, approved April 22, 1931 (Acts 1931, p. 247), which Act further defines the powers and duties of the County Commissioners of Jefferson County. Said Section 14 provides as follows:

"Section 14. That said Commission may at its discretion pay out of County funds the traveling or other expenses of any County officer or employee when such officer or employee creates such expense under the order or direction of such Commission."

It will be noted from the above that traveling expenses must be created under the order or direction of the Commission. This, in my opinion, does not make it necessary to have such order or direction recorded in the minutes of the court at a formal meeting. Moreover, if the expenses would have been a legal charge in the first instance same may be subsequently ratified.

The rule relative to ratification of acts by county governing bodies is stated in 15 Corpus Juris, 465, Section 117. It is as follows:

"Ratification. Where a board of commissioners has authority to do certain acts in the first instance, it has authority to ratify and to confirm the unauthorized acts of a committee of its members in regard to such matters. Except in some jurisdictions, if the County board has authority to order expenditures or the performance of services in behalf of the county, it may cure informalities or irregularities in the procedure for ordering the making of such expenditures or the performance of such services, by a subsequent ratification of the acts done in pursuance of the order and in recognition of its liability therefor. On the other hand, a ratification will not be inferred from mere passive acquiescence, and the board has no power to ratify what it could not have authorized in the first instance."

Very truly yours,
A. A. CARMICHAEL,
Attorney General.

November 1, 1935.

Hon. Sam Burns, Sheriff,
Talladega County,
Talladega, Alabama.

Under Section 24 of an Act approved July 22, 1931 (General Acts 1931, p. 359) where a defendant is brought from another state to this state under extradition, the expenses of such removal must be paid by the county out of its general fund in misdemeanor cases.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 3, 1935 in which you request my opinion as follows:

"I went to Rome, Georgia, to return a prisoner who was tried and convicted for a misdemeanor in Talladega County, and my claim for expenses in the return of this prisoner has been in all things approved.

"Under an Act of the Legislature, the expenses incurred by me are to be paid by the County.

"Please advise me officially if I should file my claim against the Fine and Forfeiture Fund of Talladega County or the General Fund for this refund of expenses."

I call your attention to Section 24 of an Act approved July 22, 1931, (General Acts 1931, p. 559), which reads as follows:

"24. (Costs and expenses) When the punishment of the crime shall be the confinement of the criminal in the penitentiary, or by death, the expenses shall be paid out of the state treasury, on the certificate of the Governor and warrant of the auditor; and in all other cases they shall be paid out of the county treasury in the county wherein the crime is alleged to have been committed. The expenses shall be the fees paid to the officers of the state on whose Governor the requisition is made, and not exceeding Ten cents a mile for all necessary travel in returning such prisoner."

You will note the above section says that the county must pay out of the county treasury extradition expenses of all defendants where they are not sentenced to death or to the penitentiary. This simply means that the county must pay such expenses where the defendant is charged with a misdemeanor. The Act, supra, says the county must pay these expenses out of the county treasury but fails to designate what fund the same should be paid out of. Therefore, it must be paid from the general fund of the county. It cannot be paid out of the Fine and Forfeiture Fund of the county for the reason it is not listed among the fees paid out of said fund under Section 4039 Code of Alabama, 1923, as amended by an act approved February 18, 1927 (General Acts 1927, p. 45). (I call your attention to Section 186 of the Code of Alabama of 1923.) Chief Justice Anderson, in a recent case, Weaver et al., vs. Tidwell, County Treasurer, 153 So. 218, held that "Where the law says to be paid out of the County Treasury meaning, of course, out of the general fund." The wording of the two statutes, the one under consideration by Judge Anderson in writing the above opinion, and the one we have here under consideration, is almost identical. Therefore, we hold that the claim which you refer to above must be paid out of the general fund of the county.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 2, 1935.

Hon. William F. Black,
Acting Director, Transportation Bureau,
Alabama Public Service Commission,
Montgomery, Alabama.

Construction of Alabama Motor Carrier Act of 1931 (General Acts of Alabama, Regular Session, 1931, p. 303).

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of Janauary 25, 1935, in which you request my opinion as follows:

"The Commission desires a ruling from you on the following proposition arising under the Alabama Motor Carrier Act of 1931:

"Due to an erroneous construction of the Act relative to the payment of mileage tax, a Motor transportation company has been paying mile-

age taxes to the Commission on basis of one-half cent per mile. The Commission, not being officially advised that the tax was being paid on the wrong basis (mileage tax reports reflected the rated capacity shown on the Commission's records), payments have been accepted by the Commission over a period of years. Recently as the result of an investigation it developed that this carrier should be paying on basis of one cent per mile. The result is that the mileage tax payments of this carrier have been increased 100%. The carrier finds it difficult to arrange its affairs so that the larger amount can be paid on the date due. It has presented to the Commission its check in the full payment of the amount usually paid and has presented another check in payment of the amount over and above what it usually pays. We have been requested to hold the latter check for about two weeks before presenting it for payment. Sworn report has been filed showing that the total amount under both checks is due.

"In view of these circumstances should the carrier be required to pay the 25% penalty prescribed in the fourth paragraph of Section 5 of the Alabama Motor Carrier Act of 1931? Stated differently, are the circumstances described above a sufficient defense to the payment of the penalty referred to?"

We note that you say above: "Due to an erroneous construction of the Act relative to the payment of mileage tax * * * ." I presume this could but mean error was made by both the Commission and the transportation company. If this is true, and on account of the finances of the transportation company being embarrassed temporarily to the extent that they are not able to pay amount due in lump sum and make payment as suggested by you above, then, in this event, I am of the opinion, if these checks are paid on due date, that equity and justice would demand that they be not required to pay the 25% penalty assessed in Section 5 of the Alabama Motor Carrier Act of 1931, (General Acts 1931, p. 303.).

I quote with approval from an opinion of this office rendered January 2, 1935, which holds, among other things:

"The statute, in this instance, prescribes a remedy for the enforcement of this penalty when it is not voluntarily paid. This remedy is to be found in Section 45 of the Act, which reads as follows:

'Section 45. Any penalty of forfeiture imposed, declared or implied under the provisions of this Act may be enforced by a civil action at the suit of the State, and the Commission may institute and prosecute or cause to be instituted and prosecuted such action for the enforcement of such penalties or forfeitures to the State!"

"It is made the duty of the Commission by this statutory provision to collect, or cause to be collected, the penalty by action in the courts whenever it is not paid. Section 5 of the Act makes it the duty of the Commission to collect the mileage taxes due the State by motor transportation companies. I presume the Commission is in position, to determine from its records when a penalty is due and how much it is.

"There are some defenses to a statutory penalty (25 C. J., Section 95, p. 1187; 21 R.C.L., Sec. 32, p. 234), and such defenses may be asserted, in any instance, by a motor transportation company as against the statu-

tory penalty, even though there might be no defense against the payment of the mileage tax itself."

The opinion quoted from above, is dealing with the very question here under consideration. The authorities cited in said opinion are in line with the opinion above quoted, but the proposition here under consideration differs slightly from the one being considered at that time. I cannot but feel where an honest mistake was made and an effort was made to pay all thought due, and in fact did pay all that was demanded and was thought due, and the party shows a willingness to pay now the proper amount, I believe under the circumstances the courts would be be slow to add this penalty.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 4, 1935.

Hon. J. A. Keller,
State Superintendent of Education,
CAPITOL.

Under facts you are authorized to release warrant.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of August 21, 1935, to which was attached a letter from Hon. R. H. Hudson, Superintendent of Education of Colbert County.

The facts as I gather them from the two before mentioned letters are that in 1927 Colbert County voted for the levying of the county three mill tax and that every district thereof except two voted for the district three mill tax; that those two have since voted the district tax; that in order to erect school buildings in some of the districts a plan was conceived whereby the county issued warrants against the county three mill tax fund, which fund was to be reimbursed by the district three mill tax collected in the particular districts wherein the buildings were erected. The buildings were erected and the builders thereof have been paid by virtue of the issuance of the before mentioned county three mill tax warrants; that in 1931 acting under the provisions of Act No. 370, H. B. No. 350, approved July 8, 1931 (General Acts, 1931, p. 435) the County Board of Education made application to the State Board of Education to obtain Colbert County's proportionate share of the rural schoolhouse funds for the purpose of applying same on the indebtedness incurred in the manner above set out; that said application showed that at least twice the amount sought from the rural schoolhouse fund had been raised from other sources than the State to be applied on said indebtedness, and that all provisions of Sections 370-386 of the School Code of 1927 had been complied with; that said application was approved and warrant issued to the Colbert County School authorities but that said warrant was never cashable by the said school authorities because approval certificate was never given by the State Department of Education that such approval certificate was withheld because of the opinion of an executive officer of the State Board of Administration that such warrant could not be cashed until it appeared that the entire indebtedness had been paid; that Colbert County

had paid its two-thirds part of the indebtedness; that the warrant was returned to the State Department of Education and was extended for a period of three years which term of extension will expire October 1, 1935; that funds are available for purpose of paying this warrant.

You desire an opinion of this office as to whether or not you can legally pay said warrant in view of the fact that the entire indebtedness had not been paid.

I am of the opinion that your inquiry should be answered in the affirmative.

Under the facts above set out in the application seems to comply in all respects with the 1931 Act, supra, and with Sections 370-386, School Code 1927. In my opinion it was necessary only to show that all of the funds raised from sources other than the State had been applied to the indebtedness which, together with the money to be realized on the warrant in question, would settle the entire indebtedness.

I refer you to an opinion of the Attorney General rendered on September 30, 1931, to Hon. A. F. Harmon, (Biennial Report Attorney General, 1930-1932, p. 465) which I think specifically answers your question. It was therein held:

> "When the State warrant is issued and placed in the hands of the County Treasurer of School Funds, the local matching funds should be immediately applied to payment of the debt whereupon, the State authorities being satisfied that all provisions of law and the regulations of the Department of Education have been fully met then the State authorities release the warrant to be cashed, and the warrant must be immediately applied on the debt."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 4, 1935.

Hon. J. B. Tanner,
License Inspector,
Limestone County,
Athens, Ala.

County cannot furnish the License Inspector of Limestone County with stamps for necessary correspondence under Subsection H of Section 353 of 1935 Revenue Law.

Dear Sir:

Opinion by Assistant Attorney General Kohn.

I acknowledge receipt of your letter of October 23, 1935, in which you state:

"Please tell me if it would be legal for the Board of Revenue to furnish me with postage stamps under the following conditions.

"I have a great many letters to write to the State Tax Commission and also make a practice of writing to delinquents if they fail to appear after I have cited them to take out license."

You request my opinion:

"Would Section 353H, page 92, of the new Revenue Code allow the County to furnish me with stamps for necessary correspondence?"

I am of the opinion that your question should be answered in the negative. I have been unable to find any authority for the county to furnish you stamps under Subsection H of Section 353 of 1935 Revenue law, which is as follows:

" * * * (h) It shall be the duty of the Court of County Commissioners or other governing body of the several counties to supply the License Inspector with necessary citation blanks and other necessary forms to be paid for by the county * * * "

Public funds can never be expended unless there is expressed authority or authority necessarily implied.—**Biennial Report of Attorney General, 1928-1930, pp. 826 and 981.**

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 5, 1935.

Hon. Howell Turner,
Secretary of State,
CAPITOL.

Legislature—General Acts of Legislature may be bound in one volume under provisions of Section 2918 of the Code of 1923.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of November 1, 1935, which is as follows:

"There seems to be a conflict in Sections 2913 and 2918 of the Code of 1923 with reference to the printing of the Acts of the Legislature.

"Section 2913 provides 'when the matter enumerated will take more than twelve hundred pages, they shall be printed and bound in two volumes of the same size and the maximum price per page for printing shall be three dollars.'

"Section 2918 provides 'the general laws shall be bound in one volume in an edition of four thousand copies.

"The General Acts of 1935 will run around fourteen hundred pages. Please advise me whether they should be printed in one or two volumes."

In answer to your inquiry, I am of the opinion that the General Acts of the Legislature in question may be printed in one volume.

There seems to be an irreconcilable conflict between Section 2913 and 2918 of the Code of 1923 in respect to the number of volumes necessary to be printed and bound in the case of the General Acts of the Legislature. Section 2913 provides that they shall be printed and bound in two volumes of same size if there will be more than twelve hundred pages. Section 2918 provides that the general law shall be printed in one volume and makes no reference to the number of pages.

As above stated, the sections under consideration pertain to the same subject and are in conflict in so far as your inquiry is concerned. They were brought forward into the Code of 1923. Section 2913 was brought forward from Acts 1915, p. 712, Section 4. Section 2918 was brought forward from Acts 1919, p. 103, Section 1. There is no field of operation for both of these statutes with reference to your inquiry because of the conflict therein. Where this is true, it becomes necessary to ascertain the legislative intent, and all particular rules for the construction of such provisions must be regarded as subservient to this end. The well-settled principle is that the last expression of the legislative will is the law in case of conflicting provisions of the statute on the same subject, and the last enacted in point of time prevails. Therefore, in my opinion, Section 2918 will prevail over Section 2913, in so far as the matter of your inquiry is concerned.—**Middleton v. General Water Works & Electric Corporation,** 25 Ala. App. 455, 149 So. 351; cert. den. 227 Ala. 219, 149 So. 352.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 7, 1935.

Hon. A. B. Jefferies,
Member of the Board of Revenue &
Road Commissioners, Mobile County,
Mobile, Alabama,

Member of Board of Revenue, who own majority of stock in corporation which manufactures and sells mattresses to dealers who resell mattresses to County, not pecuniarily interested in sales so as to be a violation of Section 5024 of 1923 Code.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I acknowledge receipt of your letter of October 22, 1935, in which you state:

"Please advise if it would be lawful for mattresses manufactured by a member of the Board of Revenue and Road Commissioners of Mobile County, who is in the business of manufacturing mattresses and has been for many years prior to the beginning of his term as a member of the Board, to be sold to the County by dealers who purchase these mattresses from the said manufacturer.

"In other words these mattresses manufactured by the factory which is owned by a corporation, the said member of the Board being the owner of practically all of the stock of said corporation are purchased from the mattress factory by furniture dealers and others engaged in the business of selling mattresses and are then resold to purchasers including the County of Mobile.

"As it is the desire of the member of our Board referred to above not to in anyway violate the law of the State, I would appreciate very much as prompt a reply to this letter as you can conveniently give me."

It is my opinion that your question should be answered in the affirmative.

I find no objection to the County buying mattresses as outlined in your letter. The County purchases the mattresses from a dealer and is not interested from whom the dealer obtains his supplies. The purchase by the County from the dealer is a separate and complete business transaction and is in no way related to the dealer buying his supplies from the manufacturer. Although a member of your Board may own practically all of the stock in the manufacturing corporation, yet in the eyes of the law he is not the corporation and is a separate entity.

> "A corporation is a distinct entity, to be considered separate and apart from the individuals who compose it."—**Navoo Hardwood Company v. Bass,** 214 Ala. 553, 108 So. 452.

It is my opinion that the member of your Board is not pecuniarily interested in the purchase of the mattresses so as to violate Section 5024 of the Code of 1923, which is as follows:

> "Any Probate Judge * * * members of the Court of County Commissioners, or Board of Revenue or any other State or County officer * * * who takes any contract * * * or sells any goods or supplies to the County, or is in any wise pecuniarily interested in any such contract or sale, as principal or agent, must, on conviction be fined not less than fifty nor more than one thousand dollars, and may be imprisoned in the County Jail, or sentenced to hard labor for the County for not exceeding twleve months; nothing in this Section shall apply to the sale or purchase of drugs or medicine for the use of prisoners or paupers."

Yours very truly,
A. A. CARMICHAEL.
Attorney General,

November 12, 1935.

Brigadier General John C. Coleman,
The Adjutant General,
CAPITOL.

License and taxation—Identifying data for exemption of National Guard Officers from motor vehicle license tax (Act 511, approved Sept. 14, 1935), should be provided by the Adjutant General; and for regular Army Personnel should be provided by the Commanding Officers of the posts or stations to which said Personnel are attached.

Fees and costs—Probate Judge not entitled to fifty cents issuance fee on delivery of motor vehicle tag to National Guard Officer or Regular Army Personnel exempt from payment of motor vehicle license tax.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion dated October 16th, 1935, as follows:

> "1. Attention is invited to H. Bill 162, by Representative George P. Quarles, 1935 Session of the Legislature.
>
> "2. Information is requested as to who shall issue the identifying data for the issuance of these tags by the proper county officials, and also if any fee can be charged for the issuance of these tags."

In my opinion the Commanding Officers of the posts or stations of the Regular Army Personnel applying for exemption should provide the identifying data for such personnel; and the Adjutant General, acting for the Governor, should provide the data for all officers of the National Guard.

Section 1 of Act No. 511 (Quarles Act) provides in part:

"Such vehicles shall be properly identified with tags or plates issued by the proper department of the Federal Government or by the commanding officers of the Army or National Guard having jurisdiction in the premises."

In my opinion, the use of the phrase "the commanding officer * * * * * of the National Guard," in the above quoted excerpt refers to the Commander in Chief.

That part of your inquiry pertaining to the fifty cent fee of the Probate Judge for issuance of a tag to the persons exempt from payment of the motor vehicle license or registration tax, must be answered in the negative.

The law of fees and costs must be strictly construed and an officer may not take a fee for a service rendered unless he can point to specific authority therefor. Schedule 158.20 of Chapter 6, Article XIII of the Revenue Bill of 1935 provides:

"The Probate Judge for issuing the licenses required by this Chapter of this Article, shall be allowed a fee of fifty cents for issuing each license for operating motor vehicle, which shall be paid to the Probate Judge by the owner at the time of the issuance of the license tag."

The fee is allowed to the Probate Judge for "issuing the license." The persons designated in the Quarles Act are exempt from the license and therefore none is issued by the Probate Judge to them. The Probate Judge is therefore not entitled to the fifty cent issuance fee.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 12, 1935.

Hon. A. H. Collins, Commissioner,
Department of Public Welfare,
Montgomery, Alabama.

Public Welfare—Funds of County Boards of Child Welfare should be transferred to County Departments of Public Welfare under Act No. 332 Senate Bill 365, approved August 27, 1935.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of October 30, 1935, in which you state that in several counties of the State of Alabama Relief Administration have deposits to the account of the County Child Welfare Departments made previous to September 1, 1935. These deposits were funds derived from county gasoline moneys.

You request my opinion as to whether or not it would be legal and proper for these funds to be transferred to the accounts of Departments of

Public Welfare in the counties where such funds are on deposit in view of Act No. 332, Senate Bill 365, approved August 27, 1935, which Act created State and County Departments of Public Welfare.

I am of the opinion that your inquiry should be answered in the affirmative.

The authority for this transfer is specifically provided for in Section 10 of the Act under consideration. Said section provides as follows:

"Section 10. There shall be established in each county a County Department of Public Welfare which shall operate under a County Board of Public Welfare and shall consist of the County Director of Public Welfare and such employees as the County Board and the State Board deem necessary for the efficient performance of the Welfare services of the County. The rights, powers, duties and responsibilities now vested by law in the County Board of Child Welfare are hereby transferred to and vested in the County Board of Public Welfare upon the approval of this Act, the County Board of Child Welfare, whose rights, powers, duties and responsibilities are hereby transferred, shall be abolished. Whenever reference is made in any law of the State to the County Child Welfare Board such reference shall be deemed to apply to the County Board of Public Welfare. All property, books or records, files and other documents and papers belonging to the County Child Welfare Boards are hereby conveyed and transferred to the County Boards of Public Welfare."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 12, 1935.

Hon. A. H. Collins,
Commissioner of Public Welfare,
Montgomery, Alabama.

The Revenue Law of 1935, which went into effect October 1, 1935, repeals Local Act for Madison County, 1932, page 71.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 7, 1935, in which you request my opinion as follows:

"I will thank you to advise me as to the legality of the American Red Cross of Madison County indorsing certain checks to be received by that unit from the Board of County Commissioners of Madison County over to the County Department of Public Welfare of Madison County to be used by said Department in general relief work within the county. The provision is the authorization of the Board of County Commissioners providing certain funds realized from the proceeds of the excise gasoline tax levied, collected, and disbursed to said county, as contained in Act No. 181 of the 1932 Extraordinary Session of the Legislature."

I do not find it necessary to answer your question as presented, as the Act you refer to approved November 2, 1932 (Local Acts, 1932, page 71), was repealed by the General Revenue Act of 1935, which was approved July 10, 1935 and went into effect October 1, 1935 and this Act provides in part as follows:

" * * * Any residue of such fund, after provision shall have been made for the primary obligations herein set out, may be used by the Highway Commission with the approval of the Governor, in constructing public roads and bridges within the State as now or may hereafter be provided by law, and in maintaining the public roads and bridges which have been or may hereafter be constructed by the State Highway Commission; in equipping and preparing convicts for use upon the public roads and bridges of this State; for maintenance of such convicts while so at work upon such roads and bridges; for compensating the State for the use of such convicts."

Also Section 156.11 provides in part:

" * * * supervising, preserving maintaining, constructing and regulating the use of public roads, and bridges in the State of Alabama, and to maintain and supervise State Convicts while working upon such roads and bridges, * * * "

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 12, 1935.

Hon. A. H. Collins, Commissioner,
Department of Public Welfare,
Montgomery, Ala.

State Board of Public Welfare may not disqualify on basis of kinship, those who have worked four years.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of September 11, 1935, in which you request my opinion as follows:

The following is an extract from Section 4 of Public Welfare Act No. 332 (Senate Bill 365):

"Section 4 . . . . The State Board shall have the power and it shall be its duty to fix minimum standards of service and personnel, and to set salary schedules, based upon education, training, previous experience, and general efficiency which must have been attained by persons selected for the positions to be filled in the State Department and the County Departments of Public Welfare hereinafter created. Provided, however, the State Board shall not disqualify those Child Welfare Workers from holding office, if they have had at least four years experience as a Child Welfare Worker in Alabama for the past four years prior to the passage of this Act, on account of education requirement, training, previous experience and general efficiency."

Also, Section 14 in its entirety:

"Section 14 . . . . The County Director, with the approval of the County Board, shall appoint such staff as may be necessary to administer all welfare activities within his jurisdiction and to perform all other duties required of him. Such appointments, with the exception of the clerical staff, shall meet the qualifications as to training, experience and efficiency which are prescribed by the State Board. The salaries of the staff shall be fixed by the County Board in conformity with the salary schedule prescribed by the State Board . . . "

At a meeting of the State Board of Public Welfare on August 28th, the following resolution was passed:

"Subject to the provisions of law the Board adopts the rules and regulations now in force in the Child Welfare Bureau as to all qualifications as to personnel, as to both State and County Welfare Boards, and in addition thereto prescribes that no relative within the fourth degree, affinity or consanguinity, of any member of the County Board of Welfare or County Commissioners Court, or like governing body, or of any other county officer, shall be eligible to employment by the State or County Board of Welfare within the county in which the relationship exists."

I wish to know that if under the above sections of the Act the provision of the resolution relating to kinship, whether affinity or consanguinity, applies to those persons who have been Child Welfare workers for the past four years prior to the passage of this Act."

I am of the opinion that the Board would not be authorized under the said Act to disqualify Child Welfare workers who have had four years experience as set forth in Section 4 of the Act quoted in part in your letter.

The intent of the Legislature as expressed in the caption of the bill, was to authorize the Board "to prescribe adequate standards of **education, training** and **experience**" of persons selected, and in the bill itself the Legislature specifically provides that the Board shall not disqualify a person who has had four years experience, on account of **Educational requirement, training, prevous experience** and general efficiency. That is, the Legislature has limited the authority of the Board in reference to those who have had four years experience, in practically the same words that it has granted the authority to prescribe regulations.

I am of the opinion therefore that the Board could not disqualify those who have worked four years, on the basis of kindship.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 13, 1935.

Hon. Burr Reeves,
Sheriff, Pike County,
Troy, Alabama.

Under Section 6716 of the Code of Alabama, 1923, the sole authority

to employ a bailiff to attend Circuit Court is vested in the Presiding Circuit Judge.

Opinion by the Attorney General.

Dear Sir:

I beg to acknowledge receipt of your letter of November 1st, as follows:

"Under date of May 14th, 1931, your office rendered an opinion to Hon. Pleasant Nichols that the authority to appoint the bailiffs to serve the Circuit Court was vested in the Sheriff of the County. This opinion also holds that such bailiffs are to be paid $3.00 per day by the County Treasurer on the certificate of the Circuit Judge, etc. Under date of Sept. 5th 1935, an Act (H-191 Lee) became law and Section 5 provides that no claim shall be paid by the County Treasurer or Depository except on warrant drawn by the Probate Judge or other officer designated by the Court of County Commissioners or other governing body of the County. The Court of County Commissioners has designated the Probate Judge as the person to draw all warrants on the County Depository of Pike County. Please refer to Sections 6716 and 6717, Code of 1923 and H-191-Lee (Monroe) and advise me as follows:

"(1) Can anyone, other than the Sheriff of Pike County, appoint bailiffs to serve the Circuit Court?

"(2) Can the Circuit Judge, without consulting and getting the approval of the Sheriff, appoint a bailiff or bailiffs to serve the Circuit Court?

"(3) In the event the Circuit Judge does appoint a bailiff or bailiffs to serve the Circuit Court without the approval of the sheriff would such services be a legal charge against the County?

"(4) If such expense is not a legal charge against the County, would the Probate Judge, drawing a warrant for the service of a bailiff not appointed by the Sheriff, be liable on his official bond for drawing such warrant?"

In answer to your inquiry I beg to refer you to Section 6716, Code of Alabama, 1923, which Section provides as follows:

"6716. Bailiffs, constables, or deputies to attend court.—The sheriff of the county must summon one person to serve as bailiff for the grand jury; one to serve as bailiff in every circuit court, or division thereof, in which cases are being tried without juries when directed by the judge; and not exceeding four to serve in every court or division in which cases are being tried by juries, when the judge thereof certified that such baliff or bailiffs are actually necessary."

Under the provisions of this Section and the decisions of our Courts construing this Section it is my judgment that the authority to employ bailiffs to attend the Circuit Court is vested solely in the presiding circuit judge.

In the case of **Ward, President, Board of Revenue and County Commissioners vs. State ex rel. Goldsmith,** 62 So. p. 660, the Court of Appeals of Alabama, in my judgment, clearly recognizes the sole authority and power of

the Circuit Judge to employ the bailiffs mentioned in Section 6716 of the Code.

When the bailiff is appointed as directed in this opinion, it is my judgment that the County may proceed to pay him as provided by law without incurring any liability on official bonds.

There appears an opinion in the Biennial Report of the Attorney General 1930-1932 at page 161, on this subject, and anything in that opinion in conflict with this opinion is held for naught and is withdrawn. All opinions in this office in conflict with this opinion are hereby withdrawn.

Section 6716, Code of Alabama, 1923; Ward vs. Goldsmith, 82 So. p. 660.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 14, 1935.

Hon. Alex Brantley,
Judge of Probate, Pike County,
Troy, Alabama.

1. National Guard—Exemption of officers from motor vehicle license tax (Act No. 511, approved September 14, 1935) is in the nature of a bounty, and is not conditioned upon the motor vehicles being used for governmental purposes.

2. Probate Judge is the proper officer to issue motor vehicle tag to exempt National Guard Officer.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your letter of October 12th, as follows:
"Section (1) of Act No. 511 approved September 14, 1935 reads as follows:

'There shall be exempted from the operation of the privilege or license tax and registration fee now or hereafter to be levied on automobiles and motor vehicles within the State of Alabama, passenger vehicles owned and operated by the Federal Government or by officers and enlisted men actually serving in the United States Army who are assigned by the War Department as Instructors and/or Sergeant-Instructors with the National Guard of Alabama and all commissioned officers of the Active National Guard of Alabama.'

"Is it your opinion that under this part of Section (1) that private automobiles owned by the Commissioned Officers of the National Guard of Alabama are exempt from purchasing an automobile tax where these privately owned cars are not used exclusively for Governmental purposes?

"Section (1) further says that such vehicles shall be properly identified with tags or plates issued by the proper department of the Federal Government or by the commanding officer of the Army or National Guard having jurisdiction in the premises; and upon presentation of such proper identification to the county officials of the county in which

said vehicles are ordinarily kept or stored said official of the State of Alabama shall issue a license tag to be attached to said vehicle.

"You will note that one part of this law says that the tag should be issued by the State Officials and another part of it says that it shall be issued by the County Officials. If your ruling is that, the automobile specified under Question (1) of this Act are exempt from paying for a license tag then who is the proper person to issue the tag, the Probate Judge, or the State Tax Commission or the Adjutant General?

"If the Probate Judge is to issue free tags to the above officers, is he entitled to a fifty cent issuance fee?"

Your first inquiry is answered in the affirmative.

The exemption provided for National Guard and Regular Army Personnel is not based upon the premise that the automobiles exempted from the registration or license tax are to be used in the public service, or for any governmental purpose. It is in the nature of a bounty. In 9 Corpus Juris, page 301, it is said:

"The bounty acts have been repeatedly held to be constitutional, on the ground that the encouragement of enlistments was for the public good in that the community might thereby be relieved from an impending or possible draft, and also on the ground that the obligation to render military service and to support the burdens of war rests on the entire community, and not merely on those called on to serve personnally in the field."

In answer to your second inquiry, it is my opinion that the Probate Judge of the County where the motor vehicle is ordinarily kept or stored, is the proper office to issue the motor vehicle tag to the exemptioner. The language used to express the meaning of the Act is not entirely clear. However, it must be kept in mind that the Act was dealing with officers of the United States as well as officers of the State and with civil officers as well as with military officers.

In my opinion, the phrase "said official of the State of Alabama, etc." was used to distinguish the civil from the military officers dealt with therein and that the word "said" as used in that phrase refers to and is demonstrative of the official to whom presentation of proper identification certificates must be made.

It is to be noted that immediately following this particular phrase is the phrase "without, however, charging the usual fee for registration or licensing of said vehicle." The Probate Judge is the official who charges, that is, collects, the license or registration fee levied upon motor vehicles.

From a consideration of the whole Act it is apparent that the Probate Judge is the official designated therein to issue the motor vehicle tag.

Your third inquiry has heretofore been answered by an opinion of this office addressed to Brigadier General John C. Coleman, the Adjutant General of Alabama, under date of November 12, 1935, which holds that the Probate Judge is not entitled to the issuance fee of fifty cents for issuing a license tag to an exemptioner provided for in the Quarles Act. A copy of this opinion is transmitted herewith.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 14, 1935.

Hon. Alex Brantley,
Judge of Probate,
Pike County,
Troy, Ala.

Schools—Superintendent entitled to reimbursement for supplies bought which are authorized.

Opinion by Assistant Attorney General Small.

Dear Sir:

The opinion rendered to you on September 5, 1935, is hereby withdrawn and the following opinion is substituted therefor:

"During the audit of the County Superintendent's records, the auditor came across the following items which were paid by the superintendent:

"Compulsory Attendance Forms
Reimbursement for shelves in office for Circulating Library.
Forms for Attendance Office
Supplies for Supt. Office
Reimbursement for Labor to School Supervisor
Forms for Transportation
Printed Cards for Attendance Officer
Office Supplies for School Supervisor

"I am wondering if the Superintendent should be reimbursed for such items, payable from the General Fund.

"Will thank you very much for your opinion on the matter, and trusting that I may hear from you at an early date I am"

Section 169, Alabama School Code, 1927 provides as follows:

"Assistants to County Superintendent, Office, etc.—The County Board of Education may in its discretion **provide** upon the nomination of the County Superintendent of Education, at least the following assistants: **an elementary School Supervisor** and a statistical and stenographic clerk. No person shall be eligible for appointment as such supervisor who does not hold a certificate of administration and supervision as required of County Superintendents of Education. The County Board of Education may employ additional clerical and professional assistants, including health supervisors, and may reimburse them for all actual traveling expenses necessary in the performance of their official duties. The County Superintendent is hereby required to maintain an office at the County seat. The County Board of Revenue or Court of County Commissioners shall provide the County Superintendent of Education and his professional and clerical assistants with ample, convenient and comfortable office quarters. The County Board of Revenue or Court of County Commissioners shall also provide **necessary furniture, office equipment,** stationary, postage, forms and **supplies** required by the County Superintendent of Education and his assistants."

This section requires the Commissioners Court or Board of Revenue to furnish the County Superintendent of Education and his assistants with office quarters, furniture, office equipment, stationery, postage, forms and **supplies** which may be required by said superintendent or his assistants.

This same section authorizes the employment of a school supervisor as an assistant to the County Superintendent of Education.

It must be noted, however, that this section specifies that, **"The County Board of Revenue or Court of County Commissioners shall provide - - - -."** In my judgment, this language is limiting in the sense that all purchases shall be approved by the County Governing Body and paid for only upon their approval.

If, therefore, the purchases and expenditures made by the County Superintendent of Education have the approval of the County Governing Body, then it becomes the duty of the County Governing Body to reimburse the County Superintendent for those expenditures so approved.

Subject to this limitation, in my judgment, the Superintendent of Education should be reimbursed for the following items: ,

Supplies for Superintendent's office
Reimbursement for Labor to School Supervisor.
Office Supplies for School Supervisor.

Sections 396 and 397 of the Alabama School Code, 1927, provide for circulating libraries and the book cases which are necessary equipment for the maintenance of such libraries.

Section 189, in conjunction with the above quoted sections, and subject to the approval of the county governing body, authorizes the reimbursement of the County Superintendent for expenses incurred in providing shelves in his office for a circulating library.

With reference to payment for compulsory attendance forms, forms for attendance officer, forms for transportation and printed cards for attendance officer, it is my opinion that the Superintendent of Education may be reimbursed by the County Board of Revenue or Court of County Commissioners. I refer you to Section 169 School Code of 1927, which provides in part as follows:

> "The County Board of Revenue or Court of County Commissioners shall also provide necessary furniture, office equipment, stationery, postage, forms, and supplies required by the County Superintendent of Education and his assistants."

In my judgment, the word **"forms"** as used in this statute is broad enough to include all of those forms required by the Superintendent of Education, with approval of the County Board of Revenue or Court of County Commissioners.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 14, 1935.

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

1. Under Act 547, approved September 14, 1935, amending the so-called Contract Carrier's Act of 1932, only motor vehicles used exclusively

for the transportation of school children etc. from school are exempt from license tax.

2. License tags are supplied by the State Comptroller and are payable by the State out of the General Fund based on the actual cost of the tags.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of October 1st, in which you request my opinion as follows:

"House Bill No. 948 (Steele) approved September 14, 1935, amends an Act of the Legislature of Alabama approved October 28, 1932, and provides that:

" 'The State of Alabama shall provide at State expense a special license tag to be used on and to designate all motor vehicles used exclusively for the transportation of school children and school teachers to and from school, etc.,' 'These tags shall be supplied annually upon requisition to the State Comptroller by the State Superintendent of Education, etc., etc.'

"Does this law apply to motor vehicles not owned by the State or County, viz: Those owned by private individuals who contract for transporting school children and school teachers? (Contracts with individuals do not provide the exclusive use of the vehicle for such transportation.)

"The law designates no fund nor makes an appropriation for this expense and I presume this to be an expense against the Educational Trust Fund.

"Is this the proper interpretation?"

The Act to which you refer states in part:

"The State of Alabama shall provide at State expense, a special license tag, etc."

then follows the method of securing and distributing such tags.

It is my opinion that the expression "The State shall furnish at State expense," contemplates the payment by the State out of the General Fund the cost of these tags.

In Weaver vs. Tidwell, 153 So. 218, the Supreme Court held that a similar expression applying to the County contemplated the payment out of the County General Fund.

In the absence of a specific appropriation to pay for these tags, I presume the same would be paid out of the emergency appropriation, but the cost should be limited to the actual cost of the tags.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 15, 1935.

Hon. Henry S. Long,
State Land Commissioner,
Capitol.

Statutes—Act No. 440 H. B. 1048 approved September 13, 1935 takes precedence over and repeals Act No. 189 H. B. 229 approved November 3, 1932 (Acts 1932, p. 204).

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of November 14, 1935 in which you request my opinion as to whether or not Act No. 440 H. B. 1048 approved September 13, 1935 takes precedence over and repeals Act No. 189 H. B. 229 approved November 3, 1932 (Acts 1932 p. 204).

I am of the opinion that your inquiry should be answered in the affirmative.

Act No. 189 H. B. 229 approved November 3, 1932 (Acts 1922 p. 204) provides as follows:

"Section 1. That in all counties in this State having a population of three hundred thousand or more according to the last or any subsequent Federal census the probate judges in such counties shall look after, protect against trespassers, and rent any real estate bid in by the State at tax sale and shall investigate sales of real estate for taxes and bid in for the State, and said probate judges shall notify parties at interest in such real estate of such sale and shall secure redemption or sale of property subject to sale at private sale by the state, and shall have the powers and perform the duties now or hereafter by law conferred upon or required of land agents in such counties.

"Section 2. That said judges of probate shall collect and pay into the county treasury of said counties all costs, fees and commissions authorized by law to be charged for the performance of the duties prescribed by section one of this Act.

"Section 3. That in all of said counties no land agent or other agent shall be appointed to perform any of said duties.

"Section 4. All laws or parts of laws in conflict herewith are hereby expressly repealed.

"Section 5. This Act shall take effect and become a law on the first Monday after the second Tuesday in January, 1935."

Act No. 440 H. B. 1048 approved September 13, 1935 provides as follows:

"Section 1. The State Land Commissioner, with the approval of the Governor, may contract with some person or firm in each county of this State to investigate sales of real property for taxes and bid in for the State, to notify parties at interest in such real estate of such sales, to secure redemptions of said property, to secure sales of said property subject to sale at private sale by the State.

"Section 2. For such services rendered under the preceding section, the State Land Commissioner may allow fair compensation, to be fixed

in the contract, which shall not exceed 10% of the proceeds of such rent, sale or redemption, and shall be paid from the funds so received.

"Section 3. All laws and parts of laws in conflict herewith are hereby expressly repealed.

"Section 4. This Act shall go into effect immediately upon its passage."

The office of the State Land Commissioner, his powers and duties, are provided for in Sections 243-247 of the Revenue Act of 1935. The duties therein prescribed include those prescribed of the Judge of Probate in the 1932 act, supra.

It will be seen from the above that Act No. 440 H. B. 1048, approved September 13, 1935, when construed in connection with Sections 243-247 of the Revenue Act of 1935, is in conflict with Act No. 189 H. B. 229 approved November 3, 1932 (Acts 1932 p. 204). Each of the 1935 enactments refers to **each county of the State**, which in my opinion, includes counties having a population of 300,000 or more. Also each of the 1935 acts contains a full repealing clause. The acts being in conflict, the one of last adoption controls.

Yours truly,
A. A. CARMICHAEL,
Attorney General.

November 16, 1935.

Hon. Coma Garrett, Jr.,
Judge of Probate,
Clarke County,
Grove Hill, Alabama.

Counties—Section 9 and 10 of Act No. 379, H. B. 191, approved September 9, 1935, known as the "County Financial Control Act," which provides for the issuance of refunding warrants, is applicable to valid outstanding claims whether same are in form of warrants or not. Refunding warrants may contain a proviso that same may be called before maturity. Budget may contain a miscellaneous or emergency appropriation.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of October 28, 1935, in which you present the following inquiry relative to the construction of Act No. 379, H. B. 191, approved September 9, 1935, known as the "County Financial Control Act":

"(1) Clarke County has outstanding some valid obligations against the general fund which have not been put in the form of warrants. There are not sufficient funds available to provide for immediate payment of these obligations. Section 7 of the Act prohibits issuance of a warrant to cover these obligations. Section 9 of the Act, as well as existing general laws on the subject, making provision for the refunding of outstanding obligations, apply only to outstanding **warrants.** How can these obligations be validly taken care of?

"(2) In issuing the refunding warrants contemplated by the Act the warrants issued will doubtless be made to mature serially over a pe-

riod of years. The amounts of the maturities must necessarily be made small enough each year to insure their incorporation into the budget for that year. If we should incorporate in these refunding warrants a provision that they may be called and paid at par at any time prior to maturity, would such a provision be valid? That is, could the county then compel the holder of such a warrant to accept his money and stop the payment of interest prior to maturity? And would such a disbursement be a valid disbursement for any year prior to the year fixed for the maturity and payment of such warrant.

"(3) It is quite probable that at the beginning of the operation of this Act, there will be errors of judgment in the adoption of the budget; however careful we may be, we may overlook or underestimate some essential items in the budget. Will it be permissible as a safeguard against such error to make an appropriation 'for miscellaneous purposes' and to make transfers from time to time during the fiscal year from this miscellaneous appropriation to such items of the budget as may have been under-estimated or overlooked? For illustration, suppose we appropriate $5,000.00 for Circuit Court expense, and we find near the end of the fiscal year that our Court appropriation is exhausted; if we have funds available in a miscellaneous fund, could we not pay the excess Court expense out of the miscellaneous fund?"

In answer to your first inquiry, I am of the opinion that valid outstanding obligations of a county due and unpaid on October 1, 1935, which had not been put in the form of warrants may be refunded under the provisions of Sections 9 and 10 of the County Financial Control Act.

Sections 9 and 10 of the Act in question only specifically provide for the refunding of outstanding warrants or certificates of indebtedness unpaid and past due at the time the Act goes into effect, viz., October 1, 1935.

The title of the Act contains the following proviso: "to provide for the registration of all outstanding general obligations." Section 2 of the Act in defining the purpose of the Act concludes as follows: "And to authorize the refunding of outstanding general obligations, other than bonded indebtedness, so that the provisions of this Act may be put into effective operation." This general proviso shows a clear legislative intent to refund all outstanding obligations of the county, other than the bonded indebtedness. The purpose of the Act unquestionably is to this effect.

The question then presents itself as to whether or not the general purpose and spirit of the Act and the clear intention of the Legislature can be supplied and read into Sections 9 and 10 of said Act.

The intention of the legislature in enacting a law is the law itself, and must be enforced when ascertained, though it may be consistent with the strict letter of the law.—**J. H. Davis & Co., v. Thomas, 154 Ala.. 279, 45 So. 897.** A thing within the intention of the enactment of a statute is as much within the statute as if it were within the letter thereof.—**City of Birmingham v. Southern Express Company, 164 Ala. 529, 51** So. 159. And the Court in construing a statute must look to the context, the spirit, and the whole, to reach the true intent of the Legislature.—**State ex rel. Ellis v. Griggs, 287 Ala. 601, 151 So. 850; Nunas v. Harden, 226 Ala. 361, 147 So. 166,** and cases cited. Moreover, the recitals of the title of an Act are available aids to the removal of ambiguity in the enacting clauses.—**Wages v. State,** 225 Ala. 2, 141 So. 707.

Applying the above rules of statutory construction to the instant question, it is my opinion that the general purpose and spirit of the Act and the clear intention of the Legislature may be supplied and read into Sections 9 and 10 thereof. It, therefore, follows that the refunding is not limited to those claims that have been put into the form of warrants or certificates of indebtedness, but include all valid outstanding obligations, other than the bonded indebtedness, that were unpaid and past due on October 1, 1935.

In answer to your second inquiry, I am of the opinion that the refunding warrants may contain a proviso that same may be called at any time before maturity. The matter of interest and the maturity of the refunding warrants is a matter within the discretion of the county governing bodies, subject to constitutional and statutory limitations.—**Opinion of Attorney General to Judge of Probate of Clarke County** on October 25, 1935. I know of no constitutional or statutory limitation that would prevent the county governing body from incorporating into the refunding warrants a proviso in the nature of the one in question unless the obligation of contract be violated in a particular case. In other words, I do not think that the holder of an outstanding warrant or obligation need accept a refunding warrant to his prejudice in the matter of interest or maturity.—**Rhodes v. Marengo County Bank,** 205, Ala. 667, 88 So. 850.

In answer to your third inquiry, I am of the opinion that a "miscellaneous or emergency appropriation" may be included in the annual county budget made up in compliance with Section 3 of the Act in question. It would be absolutely impossible to determine in advance the exact amount of any particular class of expenditures. Section 3, supra, only requires a budget on estimated amounts of expenditures. In my opinion a "miscellaneous or emergency appropriation" would not only be legal but almost necessary.

Very truly yours,
A. A. CARMICHAEL,
Attorney General.

November 18, 1935.

Hon. Frank M. Johnson,
Judge of Probate,
Winston County,
Double Springs, Ala.

Counties—Warrants issued prior to October 1, 1935, in which no due date is expressed, should be refunded under the privisions of Act No. 379, H. B. 191, approved September 9, 1935, known as the "County Financial Control Act," if the warrants were unpaid at the time said Act became effective, viz., October 1, 1935.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter which is as follows:

"In the COUNTY FINANCIAL CONTROL ACT, Section 10, Registration of Old Warrants: This statement appears,

"The Board of Revenue, County Commissioners or other like governing body shall call in for registration anew all warrants and cer-

tificates of indebtedness payable out of the General Fund, other than bonds, which ARE PAST DUE AND REMAIN UNPAID at the time this Act becomes effective.'

"The outstanding warrants of this County have no due date, they are only to be paid out of moneys in the General Fund, in the Treasury not otherwise appropriated.

"Are we required under the said Act, to call these warrants in for re-registering."

I am of the opinion that your inquiry should be answered in the affirmative.

Although the outstanding warrants in question bear no due date, they were, in my opinion, **past due** and **unpaid** at the time the County Financial Control Act became effective, viz., October 1, 1935. If they were issued prior thereto, they would have been payable at the time of issuance if the money had been available. The fact that the money was not available at the time of issuance made said warrants due and unpaid.

Section 9035, Code of 1923, provides that an instrument is payable on demand where no time of payment is expressed.

In view of the above, it is my opinion that the county warrants issued prior to October 1, 1935, in which no due date is expressed, should be refunded under the provisions of the County Financial Control Act, if same were unpaid at the time said Act became effective, viz., October 1, 1935.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 18, 1935.

Hon. C. E. McNatt,
Clerk of the Circuit Court,
Russellville, Alabama.

Where a party is tried and convicted under Section 3474, the fine assessed must go to the injured party.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 17, 1935, in which you request my opinion as follows:

"We have a case in our Law and Equity Court of Franklin County, wherein the defendants are charged with Defacing Public Property, to-wit: a school building. The defendants pleaded guilty to said offense, and have paid to me as Clerk, their fines of $20.00 and $30.00 respectfully. I am now at a loss as to the disbursement of the fines. Should I pay the fines of $50. to the Superintendent of Education of this County or to the State Treasury? Please let me have your legal opinion of the matter at your earliest convenience, as I make reports on the first of each month."

I presume the prosecution in this case was under Section 3474 of the Code of Alabama 1923, which has to do with injuring or defacing public or private buildings, or the fences thereof. If this is true then the fine goes to the school or school house that was injured and when paid to the Superintendent, it does not go into the general school fund of the county, but must go to the repair of injury to the property, alleged in the complaint. This section reads in part as follows:

"And the fine goes to the injured party."

Yours very truly,
A. A. CARMICHAEL
Attorney General.

November 18, 1935.

Hon. John D. McNeel,
State Comptroller,
Capitol.

Clerk of Jefferson County Court of Claims is liable for failure to collect Library Tax as provided by Act 561, General Acts 1927, page 261.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of February 15, 1935, which is as follows:

"In 1931 the Legislature passed General Act No. 515, page 621, General Acts of 1931, creating the Jefferson County Court of Common Claims. Under Section 19 of the Act, it is provided that with the exception of the disposition of what is called the State Trial Tax of $3.00, the fees and costs in this Court were to be the same as those in the Circuit Court.

"In Jefferson County, by virtue of General Act 561, page 261, General Acts of 1927, a Library Tax of $1.00 is added to the other items of costs in all Civil and Equity cases. For sometime after the creation of the Court of Common Claims, the Clerk did not include in the items of cost the amount ($1.00) of the Library Tax.

"Would the Clerk of the Jefferson County Court of Claims be liable personally and on his bond for any proven loss to the Jefferson County Library Fund in instances where such loss was caused by the Clerk not including the $1.00 Library Tax in with the other items of costs collected." Section 19, page 624 of General Acts 1931 provides as follows:

"The fees and costs that are now or hereafter allowed by law, except a State trial tax in cases in the Circuit Court shall be taxed and collected as provided by law in said Circuit Court and shall by the Clerk be paid into the County Treasury. In all cases instituted in said Court there shall be taxed as a County trial tax the sum of $3.00 in addition to the other costs and fees provided herein, which shall be collected as a part of the costs and shall be paid by the Clerk of the Court into the Treasury of the County for the benefit of the general fund."

In view of the above Section and that cited in your letter, therefore, the Clerk of Jefferson County Court of Claims is charged with the duty of collecting as part of the costs in certain cases a fee or tax of $1.00 for the use of the Library Fund of the Circuit Court of Jefferson County.

I further call your attention to Section 2612 (1), which provides as follows:

"2612. Legal effect of official bond.—Every official bond is obligatory on the principal and sureties thereon—

"1. For every breach of the condition during the time the officer continues in office, or discharges any of the duties thereof."

Accordingly, failure to collect the $1.00 tax set apart for the use of the Library Fund of such Court would render the Clerk liable personally and on his bond within the above section for any loss which might have been incurred.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 18, 1935.

Hon. Chas. W. Lee,
State Comptroller,
Montgomery, Alabama.

Tax Collectors—

1. A tax collector has no authority to collect taxes after the date of the expiration of the term for which he was elected.

2. The amount of insolvent or litigated taxes charged to a tax collector when he retires from office before the expiration of the time allowed to make such collections must be charged to his successor in office, for the purpose of collecting the same.

3. The successor in office is charged with the duty of collecting, reporting, and paying the same, and making final report of uncollected balance in all respects as if no change in office had been made and he is entitled to the commissions authorized by law for the collection of same.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of September 9, 1935, which is as follows:

"The Acts of 1932 state that the Tax Collectors have until December 10, 1935, to make final settlement for taxes collected.

"In a case where a Tax Collector is going out of office on October 1, 1935, and does not make final settlement before going out of office, has he any authority to collect taxes after October 1, 1935?

"If the Tax Collector that is going out of office on October 1, 1935, hasn't authority to collect taxes after October 1, 1935, should not the amount of uncollected taxes be charged to his successor in office?

"Is the Tax Collector that goes out of office on October 1, 1935, entitled to any commissions on the amount of uncollected taxes as of October 1, 1935, that are collected after said date by his successor in office?"

I call your attention to the fact that Section 202, Article 6 of the Revenue Act of 1935, approved July 10, 1935 and effective October 1, 1935, contains the provision that tax collectors have until December 10, 1935 to make final settlement for taxes collected which provision was originally contained in Act No. 17 of the General Acts 1933 at page 9.

In my opinion, the first inquiry in your letter should be answered in the negative. In such a case, the term of office of the tax collector expired on October 1, 1935, after which date he had no authority whatever to collect taxes or to perform any other duties which the tax collector is authorized by law to perform. His official bond expired with his term of office, and after that time, he had no more authority to collect taxes than any other private citizen. The fact that the tax collector by act of the Legislature referred to above, was given until December 10, 1935 to make final settlement with the State for taxes collected, gave him no authority whatever to make collection of taxes after the date of expiration of his term of office, to-wit: October 1, 1935. The "taxes collected," referred to in the Act, supra, means taxes collected prior to October 1, 1935, during his term of office, and while he had the authority to collect the same, and while he was under bond so to do. That the Legislature recognized the fact that the tax collector had no authority to collect taxes after his term of office expired seems clear to me from the provision made in Section 185, Article 6, of the Revenue Act of 1935, that "his successor in office must be charged with the several accounts so credited to the retiring collector, and is charged with the duty of collecting, reporting and paying the same, and making the final report of uncollected balance in all respects as if no change in office has been made." Therefore, it is my opinion that a tax collector whose term of office expires on October 1, 1935 has no authority to collect taxs after that date.

Your second inquiry must be answered in the affirmative. In answer to this question I refer you to Section 185, Article 6, of the Revenue Act of 1935, quoted in part above, which reads:

"If the collector, while charged with the collection of insolvent taxes and taxes in litigation, shall retire from office before the expiration of the time allowed to make such collection, he shall make, to the next term of the court thereafter, the report required by the preceding section; whereupon allowance must be made and certified and credits entered as provided in said section; but his successor in office must be charged with the several accounts so credited to the retiring collector, and is charged with the duty of collecting, reporting and paying the same, and making final report of uncollected balance in all respects as if no change in office has been made."

Therefore, the amount of uncollected taxes charged against a collector at the time of the expiration of his term, October 1, 1935, must be charged to his successor in office, for the purpose of collecting the same.

Your third inquiry must also be answered in the negative. From Section 185 of the Revenue Act, supra, quoted in my answer to your second inquiry, it will be seen that the successor in office "is charged with the duty of

collecting, reporting and paying the same, and making final report of uncollected balance in all respects as if no change in office has been made."

Section 183, Article 6, of the Revenue Act of 1935, provides:

"It is the duty of the collector to proceed with all diligence to collect such insolvent taxes and to make monthly reports, payments and settlements thereof, with the State Comptroller and county treasurer, as he is authorized and required to do so in the collection of taxes which have not been declared insolvent; and he is entitled to the same commissions upon such insolvent taxes collected by him as are allowed by law upon the same character of taxes which have not been declared insolvent."

Since the successor in office makes the collections referred to in your inquiry, it is my opinion that he is entitled to the commissions on the same which are provided for in Section 183, supra. Therefore, it necessarily follows that the tax collector whose term of office expired on October 1, 1935, is not entitled to any commissions on the same.

Yours very truly,
A. A. CARMICHAEL
Attorney General.

November 18, 1935.

Hon. J. Lee Smith,
Judge of Probate,
Chilton County,
Clanton, Alabama.

Probate Judges are allowed to collect $1.75 for issuing marriage licenses. The $2.00 provided for under Section 9005 has nothing to do with the issuance of the license but is a fee for celebrating the rites.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 16, 1935, in which you request my opinion as follows:

"I would like to have your opinion upon the legal and proper amounts that may be charged in issuing marriage license and also for celebrating rites of matrimony. You will notice in this connection that under Section No. 7285 the sum of $1.50 is allowed for issuing and recording marriage license and the sum of $1.50 is allowed for celebrating the rites of matrimony, and under Section 9005 of the Code of 1923, the sum of $2.00 is allowed for celebrating rites of matrimony, and under Section 1153 of the Code of 1923 the Probate Judge is allowed a fee of 25c for each marriage reported, this fee to be paid by the person obtaining the marriage license and this Section further provides that in no case shall a license fee exceed $2.00.

"Therefore, will you please advise me what is the proper maximum legal charge that may be charged for issuing and recording a marriage license, including the fee of 25c for making reports of the same and also what is the maximum legal charge for celebrating the rites of matrimony?"

You are correct. Section 7285, Code of Alabama 1923 says, among other things:

"Issuing and recording marriage license, together with consent to the marriage and certificate of celebration and taking and recording bond . . . $1.50."

The above paragraph is in full payment for the things which it contains, issuing license, recording the same, together with consent of marriage and certificate of celebration and recording bond.

Section 9005, Code of Alabama 1923, simply fixes the fee for celebrating the rites of matrimony, which is $2.00 and is as follows:

"Section 9005. Any judge, justice of the peace, or licensed minister of the Gospel celebrating the rites of matrimony, is entitled to $2.00."

Under Section 1153 of the Code of Alabama 1923 the Probate Judge is allowed to charge 25c to be paid by each person obtaining a marriage license as a fee for transmitting report to the Board of Health, Montgomery, Alabama and is as follows:

"1153. Record of marriages furnished board by probate judge.—Within the first five days of each calendar month the judge of probate of each county in this state shall forward to the state board of health at Montgomery, on blank forms to be supplied by said board, reports of all marriages that have occurred in the county for the preceding month. For this service the judge of probate shall be entitled to a fee of twenty-five cents for each marriage reported, such fee to be paid by the person obtaining the marriage license. In no case shall a license fee in any county, including the fee of twenty-five cents, exceed two dollars."

Therefore when the Judge of Probate has an application for a marriage license, he is allowed to collect $1.50, the amount set out in Section 7285, supra, then he may collect twenty-five cents under Section 1153, supra. This makes a total of $1.75 for issuing the license.

Now the fee under Section 9005, supra, has nothing to do with the issuing of the license, as the parties contracting may or may not have the rites celebrated by the Judge of Probate or as we say in common parlance, have him perform the ceremony, but when he is called on to perform in this capacity for this specific service, he must collect a fee of $2.00, which is altogether different and has no connection with the issuance of the license.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 19, 1935.

Hon. P. F. DeVane,
Representative, Choctaw County,
Silas, Alabama.

County Road Commissioners cannot set aside any part of the gasoline tax received from the State for the purpose of paying the salary or the expenses of a County Child Welfare Worker, or the County Health Officer.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I acknowledge receipt of your letter of September 23, 1935, in which you inquire:

> "Will you please advise, whether or not, County Road Commissioners, can set aside any part of the gasoline tax, received from the State, for the purpose of paying or matching the State in paying the salary or the expenses of a County Child Welfare Worker or the County Health Officer."

It is my opinion that your question should be answered in the negative.

Schedules 156.9 and 156.11 of the Revenue Act of 1935, pp. 318 and 320, provide for the expenditure of the county's share of the gasoline tax received from the State.

Schedule 156.9 of the Revenue Act of 1935, imposes a two cents tax, one cent of which is equally divided among the sixty-seven counties of the State. The use of the proceeds of the one cent tax by the county is as follows:

> "Such funds when received by the County Treasurer shall be covered into the county road and bridge fund, and shall be **expended exclusively in the construction, maintenance and repair of the public roads and bridges in such county.**" (Italics supplied).

Schedule 156.11 provides for the use of the one cent tax distributed to the sixty-seven counties in the following manner:

> "* * * and said funds shall be used by the several counties of the State exclusively for the **construction, maintenance, supervision and policing of the public roads and bridges in the respective counties**; provided, however, that the Board of Revenue or other such governing body of a county may direct the State Tax Commission to pay over to the State Highway Department such part of said funds as may be agreed upon by the Board of Revenue or such other governing body of any county, and the Governor of the State of Alabama, which said funds **are to be used in the construction and maintenance of roads in said county,** to be agreed upon by the Board of Revenue of such county, or such other governing body, and the Governor of the State of Alabama."
>
> (Italics supplied).

It is evident from the above that no part of the gasoline tax funds can be spent in paying the salary or expenses of a County Child Welfare Worker or the County Health Officer as such use would not be for the construction, maintenance, supervision, repair or policing of the public roads or bridges in said county.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 19, 1935.

Hon. Walter K. McAdory,
Chief, Alabama Highway Patrol,
Capitol.

Bonds should be approved by the Governor and filed with the State Auditor.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of October 26, requesting my opinion as follows:

"Please furnish me with an opinion as to where the bonds of the State Highway Patrol should be filed.

"Section 12 of House Bill No. 545 by Mr. Wallace, Approved Sept. 2, 1935 by the Governor provides for the amount of the bond, etc."

In reply, I wish to advise that Section 12 of House Bill 545—Wallace, passed by the 1935 Legislature and approved by the Governor on September 2, 1935, provides for the bonds of members of the Highway Patrol as follows:

"Any person serving as a member of said State Highway Patrol shall make bond in the amount of $2,000.00 payable to the State of Alabama conditioned as a sheriff's bond is now conditioned, and the Highway Patrol shall be subject to same liabilities, penalties, and damages under said bonds as sheriffs are under this bond said premiums on said bonds to be paid out of funds of the State Highway Patrol."

You will note that this Act does not provides for the filing of these bonds with any certain officer nor does the Act provide for the approval of such bonds.

In my judgment, it becomes necessary in a case of this kind to rely upon a counstruction of legislative intent as found in the general law providing for the filing and approval of the bonds of State Officers, since no definite provision is made for filing and approving of the bonds in question. You will note that the Act under consideration requires that the bonds of the Highway Patrol be conditioned as are sheriffs' bonds. Section 10185 of the Code of 1923 provides that sheriffs' bonds shall be conditioned as provided for in Section 2595 of the Code of 1923. Section 2595 of the Code of 1923 provides as follows:

"2595. Official bonds; to whom payable; conditions; sureties;—The bond of each public officer, required by law to give bond, must, unless it is otherwise provided, be made payable to the State of Alabama, with such sureties as the approving officer is satisfied have the qualifications required by law, with conditions, in all cases in which a different condition is not prescribed, faithfully to discharge the duties of such office during the time he continues therein, or discharges any of the duties thereof."

You will note that this section requires that the bonds be made payable to the State of Alabama but does not provide for approving and filing of the same. Section 2635, Code of Alabama 1923 requires that the bonds of all of the State officers "herein provided for shall be made to the State of Alabama."

While the Highway Patrol officers could not be specifically set out, of course, a construction of the Act creating the Highway Patrol construed in connection with the provisions of law herein set out would indicate a legislative intent that all officers' bonds should be governed in the manner herein specified unless otherwise provided for. I find no other provision for the filing and approval of the bonds in question.

Section 2636, Code of 1923 provides as follows:

"2636. Bonds, how approved and filed.—All bonds herein provided for shall be approved by the governor, and after approval, filed in the office of the state auditor; when the said bond is filed in the office of the state auditor, the said bond shall be a matter of public record, and bonds of clerks in the auditor's office shall be filed in the office of the secretary of state."

A construction of this section in connection with section 2635, supra, in my judgment, would include the bonds of the Highway Patrol.

This, then, would lead to the conclusion that the bonds of the Highway Patrol should be approved by the Governor and filed in the office of the State Auditor.

I further refer you to Sections 773 and 813 of the Code of 1923 which provide respectively as follows:

"773. Bonds approved by the governor filed with auditor.—All bonds approved by the governor, except the auditor's bond, must be filed in the auditor's office."

"813. Auditor to keep bonds approved by the governor.—The state auditor must keep all bonds approved by the governor and place them in his iron safe or vault for safe-keeping."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 19, 1935.

Hon. F. W. McLane,
Clerk of the Circuit Court,
Talladega County,
Talladega, Alabama.

Where defendant is sentenced to hard labor for the county and appeals his case to the Court of Appeals and judgment is suspended and he makes his appearance bond to appear and carry out the sentence of the court, the cost of the appeal cannot become a part of his sentence and is payable out of the fine and forfeiture fund on the return of execution, "no property found."

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 11, 1935, in which you request my opinion as follows:

"One Joe Hingle was convicted in the Circuit Court and the judgment of the court is a fine of $50.00 and costs, said fine and costs are not paid nor judgment confessed therefor and the court sentenced said defendant to hard labor for the County for 20 days in lieu of said fine of $50.00 and to 145 days hard labor for county in lieu of the costs amounting to $108.45 at the time of conviction.

"From this judgment and sentence the said defendant appealed to the Court of Appeals, appeal bond in the sum fixed by the court was made and the sentence is suspended pending said appeal.

"The Court of appeals has affirmed this case, and now there is additional costs amounting to $21.00 for making transcript to Court of appeals (including office copy $2.50).

"When this defendant is delivered to state to work out the amount of costs as above stated which is now $129.45 and the fine of $50.00, is sentenced for all of the costs or he is sentenced for the amount of costs accrued on original sentence or for the amount of the cost now due.

"If he is only sentenced for the amount of the costs accrued on original conviction, would I as Clerk be entitled to my fees for making original transcript to court of Appeals and for office copy (see Section 6108) from the fine and forfeiture fund after an execution has been issued and returned no property found."

Where the defendant is convicted of a misdemeanor and sentenced to hard labor for the county for the costs and fine from which conviction he appeals to the Alabama Court of Appeals and the case is affirmed, the cost accruing on the appeal cannot become a part of the cost of the case for which he can be sentenced for the reason the sentence was passed before he took the appeal. His appearance bond for the appeal was conditioned that he appear and carry out the sentence of the court. This being true, this cost cannot be included in his sentence. yet the cost of the appeal is chargeable against him and becomes a civil judgment, for all intents and purposes. Executions may be issued against the defendant for the cost and if returned "no property found," then it becomes a charge against the fine and forfeiture fund under the provisions of Section 4039, Code of Alabama, 1923, as amended by an Act approved February 18, 1927, which is as follows:

"It shall further apply to the fees of the officers of the trial court, arising on an appeal, in cases where the defendant has appealed from a conviction, the punishment fixed being otherwise than imprisonment in the state penitentiary, and the judgment of the trial court is affirmed, provided the defendant be first proved insolvent by the return of the execution "no property found."

Biennial Report of the Attorney General, 1932-34, page 358.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 19, 1935.

Hon. I. I. Moses, President,
County Commission,
Girard, Alabama.

A county that, on account of the insufficiency of the jail, confines her prisoners in the jail of another county should furnish the bedding, cots, etc., for the accommodation of its prisoners.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 18, 1935 in which you request my opinion as follows:

"Russell County does not have a suitable jail for the keeping of white prisoners. The Lee County jail at Opelika has been used for quite a while for the keeping of prisoners of Russell County. The Sheriff of Lee County has notified the County Commission of Russell County that he will not accept any more prisoners from Russell County unless Russell County will provide cots, blankets, bed clothing for prisoners from Russell County.

"Please advise us whether or not Russell County can purchase such supplies for Lee County jail for the use of Russell County prisoners."

It is my opinion that under the conditions you state, Russell County should furnish the bedding, cots, etc., for her prisoners confined in the Lee County jail. Of course, such articles furnished would be the property of Russell County, and could be moved at any time Russell County has a jail sufficient to take care of her prisoners. See Section 221, Code of Alabama 1923, which is as follows:

"221. Duty of sheriff.—The appropriation having been made, and the sheriff having received payment thereof, it is his duty, so far as such appropriation will enable him, to keep the jail supplied with wholesome water for drinking and bathing, to keep drinking water accessible at all times to each prisoner, to keep it comfortably warm in cold weather, at all times clean and free from offensive odors, and provided with necessary waterclosets, or dry earth, beds, bedding, and clothing for the use of prisoners."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 19, 1935.

Hon. S. P. Poyner,
Judge of Probate, Houston County,
Dothan, Alabama.

No license levied by Revenue Act of 1935 on vulcanizing tires.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of October 30, 1935, in which you state:

"Please advise if there is under the Revenue Act effective October first a provision for a license for vulcanizing tires and tubes. Schedule 17 shows a license for retreading and rebuilding; but the garages who do not retread or rebuild but do vulcanize insist that this Schedule 17 does not apply to them."

In reply, I advise that I am unable to find any license levied on the vulcanizing of tires. I do not think the business of retreading or rebuilding is synonymous with vulvanizing.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 19, 1935.

Hon. Gaston Scott, President,
State Highway Commission,
Capitol.

Highways—Street Railway Company in City of Birmingham not liable for cost of moving of car track under Project NRM 225-B, the work being done by the State Highway Department.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of October 16, 1935, in which you enclose the following statement of Project NRM 225-B Jefferson County:

"STATEMENT REGARDING PROPOSED WORK ON PROPOSED U. S. P. W. PROJECT NO. NRM-225-B, JEFFERSON COUNTY, INSOFAR AS THE SAME AFFECTS THE ROEBUCK STREET CAR LINE OF THE BIRMINGHAM ELECTRIC COMPANY.

"It is proposed to move the street car track from its present location, indicated on the attached drawing in solid yellow, to the location indicated by red lines, in order to accommodate the construction of the new pavement, outlined in heavy red lines. First Avenue, North Birmingham, from 85th Street East toward the City Limits, which new pavement will replace the existing pavement, shown in solid yellow.

"In relocating the street car track, the area of that part of the tracks remaining on the new pavement will be paved with brick. That part of the track lying outside the limits of the new pavement will be left unpaved, as the present track now is.

"In the relaying of the track as outlined above, it is proposed that the Birmingham Electric Company will furnish all new material, ballast included, required in the removing and relaying of the track, with the exception of that material necessary to pave between the tracks as mentioned above with the State's contractor furnishing all labor, equipment, tools, etc., required to remove and relay the track at the expense of the State and Federal Government.

"For the information of the U. S. Bureau of Public Roads, it is desired to know whether or not the existing franchise of the Birmingham Electric Company would require the Company to pay any part of the work which it is proposed to pay from State and Federal Funds."

In view of the above you request my opinion as to whether or not the Birmingham Electric Company is liable under its existing franchise for any part of the cost of removing the track from the center of the street to the side of the street, as shown on the diagram enclosed.

I am of the opinion that your inquiry should be answered in the negative.

An examination of the franchise granted to the Street Railway Company in question, shows that the Street Railway Company would be liable for a change in the grade of its car track area where the project is done at the instance of the City of Birmingham. However, under the franchise enclosed, there does not seem to be any liability imposed upon the Street Railway Company when the work is done by the State of Alabama. This office has heretofore ruled that there is no liability upon a Street Railway Company for such costs under Article 33, Chapter 43 (Sections 2174-2237) of the Code of 1923. Such provision relates only to improvements done by the city or town and not to improvements done by the State.—Opinion of the Attorney General to the President of the State Highway Commission on August 1, 1935.

I am herewith returning the file in this matter.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 20, 1935.

Hon. W. C. Register,
Sheriff, Geneva County,
Geneva, Alabama.

Telephones—Section 6755, subsection 16, as amended, designates what county officers must be furnished with telephones. An Act of the Legislature approved April 19, 1933 (General Acts 1933, p. 201) makes it discretionary with the courts of county commissioners, boards of revenue or other courts of like jurisdiction, as to the furnishing of other offices with telephones not designated by Section 6755, supra. All telephones so installed should be used for official business and when so used are to be paid for by the county out of the general fund.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I have your letter of recent date in which you state:

"Section 6755, subsection 16 give the Commissioners right to establish phones in the offices of Circuit Judge, Circuit Clerk, Sheriff, Jail, Tax Collector and Tax Assessor, and Probate Judge.

"Section 1, Acts 1933, No. 137, page 201, reads as follows:

" 'The Boards of Revenue or Courts of County Commissioners may designate which offices in the court house may have telephones installed therein.

" 'Section 2. That all laws and parts of laws in conflict herewith be and the same are repealed.'

"Does this mean that the law in Section 6755 is repealed in toto and that Boards of Revenue or Boards or Courts of County Commissioners have the sole power to say where each telephone shall be placed in the various offices?

"Does this mean that the Board of Revenue or Board, or Court of County Commissioners can say that a telephone must be placed in the Probate Office, or Circuit Clerk's office, or Sheriff's office, or Tax Collector's office and that one and only one telephone shall be installed in the Court House?

"If the Board of Revenue or Board of County Commissioners are required, under the law to furnish telephones in one or more of the offices in the court house, should the County pay for calls of the Circuit Judge, Circuit Clerk, Sheriff, Tax Collector and Tax Assessor, Register in Chancery, or either of them when such call is strictly in connection with the business of the courts, or officer, acting as an official? Should the County be required to pay the monthly rent on a telephone, used by such official when the telephone is used daily by such official to order groceries, talk to his friends and acquaintances in general on the general topics and happenings in the community. In other words, should the County ever, under any conditions be charged for the personal calls of the official, or anyone else?

"Shouldn't the County pay for a telephone at County Jail."

In answering your request, I call your attention to Section 6755, Code of Alabama, 1935, subsection 16 as amended by Act 1931, p. 759, which is as follows:

"16. To procure and provide telephones for the offices of the **circuit** judge, the clerk and register of the circuit court, the offices of the **sheriff** and jailer, tax assessor and tax collector, and the judge of probate in their respective counties, and to pay for the same out of the general funds of the county; and said court of county **commissioners or board of revenue,** or like body may, in like manner and for the same officer, establish telephones in both courthouses where the said officers maintain two offices in the county; and must install such telephone upon the request of the officer entitled thereto."

I also refer you to an Act of the Legislature approved April 19, 1933 (General Acts 1933, p. 201), which is as follows:

"Section 1. BE IT ENACTED BY THE LEGISLATURE OF ALABAMA: That Boards of Revenue or Courts of County Commissioners may designate which offices in the Court House may have telephones installed therein."

I do not think the above Act repeals or even modifies Section 6755, supra. This section specifically designated just what county offices shall be supplied with telephones. The Act quoted above enlarges the power of the commissioners courts, boards of revenue or courts of like jurisdiction and leaves to their discretion the placing of telephones in offices other than those designated by Section 6755, supra. In other words, offices named in said section must be supplied with telephones, while, under the Act, supra, others **may be** so supplied at the discretion of the Commissioners Court. All telephones installed in accordance with either the statute quoted above or the Act set out above, are to be used for official business and when so used are to be paid for by the county out of the general funds.

This office had held in numerous opinions that the county should pay for the long distance calls made by a sheriff on official business.

Biennial Report Attorney General, 1926-1928, p. 127;
Biennial Report Attorney General, 1928-1930, p. 370;
Biennial Report Attorney General, 1930-1932, p. 515;

There should be no objection to an officer using his official telephone for his personal calls, provided such use does not place any additional charge on the county, or interfere with his official calls.

There is no law authorizing the county to pay for the telephone in the county jail.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 20, 1935.

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Sheriffs—Act No. 203, approved July 10, 1935, of itself, makes no appropriation for the payment of sheriffs for feeding prisoners.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion dated October 17, 1935 as follows:

"House Bill No. 317, approved July 10, 1935, fixes the amount to be paid the several Sheriffs for preparing and serving food to prisoners confined in their respective jails. This Act allows the Sheriffs a substantial increase. However, for this fiscal year 1935, the 1932 Appropriation Act appropriates the stipulated amount to be used in paying the Sheriffs each year on a monthly basis.

"In case this appropriation is insufficient for the year 1935, I would like to have your opinion as to whether or not House Bill No. 317, approved July 10, 1935, provides an additional or increased appropriation for such purposes."

Your inquiry must be answered in the negative.
Section 1 of Act No. 203, approved July 10, 1935, provides:

"Section 1. That the Sheriffs of the several Counties of the State shall receive pay for services in preparing food, serving food and other services incident to the feeding of prisoners, not including the cost of food to be served to such prisoners, as follows: For 1 prisoner $1.00 per prisoner per day; For each prisoner from 2 to 5 prisoners 50c per prisoner per day; For each prisoner from 6 to 10 prisoners 40c per prisoner per day; For each prisoner from 11 to 20 prisoners 30c per prisoner per day; For each prisoner from 21 to 85 prisoners .05 per prisoner per day."

The rate or scale of payment of the sheriff for the service to be rendered is fixed by the Act, but the amount, by reason of the uncertainty of the extent to which the service will be required by the State, could not be pre-determined by the Legislature.

There is a line of cases holding that, where the Legislature enacts a law definitely fixing the salary of an officer, no special appropriation therefor is necessary to entitle the officer to demand payment of it or to authorize the proper official to draw a warrant on the treasury for its payment, on the theory that the fixing of the salary by the Legislature operates, in itself, as an appropriation for its payment.

Nichols vs. Comptroller, 4 Stew. and P. 154;
Riggs vs. Brewer, 64 Ala. 282;
State vs. Smith, Auditor, 188 Ala. 432, 66 So. 61.

But there is a vast difference between an act fixing a definite amount to be paid to an officer as his compensation over a given period and one which merely fixes the scale or rate of payment for a service to be performed when the amount of the service which the State will require necessarily remains undetermined. In the first instance, the Act itself is operative as an appropriation to the purposes; but in the latter no appropriation is made by the Act, but specific appropriation therefor must be made by the Legislature.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 20, 1935.

Hon. W. J. Dansby,
Deputy Solicitor,
Choctaw County,
Butler, Alabama.

Local Act by DeVane, H. B. 571 which pertains to election of County Solicitor of Choctaw County does not go into effect until after the General Election, 1938, and therefore has no effect whatever on the Deputy Solicitor of Choctaw County now holding office by appointment, whose salary must be paid under the general law of the State.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of November 2, 1935, in which you request my opinion on the following matter:

"I desire to know whether or not the Solicitor's fees earned by me should be kept in a separate fund from which my salary of $100.00 per month should be paid.

"I call your attention to a Local Act of the Legislature approved July 8, 1935, H. B. 571 by DeVane, which creates the office of County Solicitor for Butler County."

You state the Commissioners Court contends that this Act does not affect you as Deputy Solicitor as it does not go into effect until after the general election, 1938. I think the Commissioners Court's construction of your Local Act is correct. You are not now operating under the Local Act, supra, you are a Deputy Solicitor appointed by the Circuit Solicitor and will continue in this capacity up to and until the general election, 1938, at which time a County Solicitor will be elected under the provision of the Local Act, supra. See Local Act 1935, H. B. 571 by DeVane. This Act does not go into operation until af-

ter a County Solicitor is elected at the general election, 1938. Therefore, no provision of said Act can be made to apply until this time. Therefore, until this Act does become effective, you operate under the general law as to Deputy Solicitors and your salary will have to be paid in the same manner and in the same way Deputy Solicitors are paid under the general law.

Yours very truly,
A. A. CARMICHAEL,
Attorney General,

November 20, 1935.

Hon. John D. Wright,
County Treasury,
Conecuh County,
Evergreen, Alabama.

Counties—The holder of outstanding warrants need not accept refunding warrants in lieu thereof if his rights are prejudiced thereby, said refunding warrants being issued under the provisions of Act No. 379, H. B. 191, approved September 9, 1935, known as the "County Financial Control Act."

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of recent date which is as follows:

"I am County Treasurer of Conecuh County.

"Under a recent Act of the Legislature known as the 'Lee Budget Bill' all Counties are required to call in and refund all outstanding warrants issued and unpaid prior to October 1st, 1935.

"One of our County officials holds several salary warrants and is taking the position that the Legislature is without authority to require him to refund his warrants; that they are duly registered in the office of the County Treasurer and that they should be paid in their order out of any available funds for salaries.

"I will appreciate if you will therefore give me a ruling on this question at your earliest opportunity."

In answer to your inquiry, I am of the opinion that the holder of the warrants in question need not accept refunding warrants in lieu thereof if his rights would be prejudiced thereby.—**Rhodes v. Marengo County Bank,** 205 Ala. 667, 88 So. 850. This presents a question of fact involving the financial condition of the county, the status of the warrants in question in the matter of preferences, and the items included in the budget for the present fiscal year.

I know of no better way to inform you in regard to the matter under consideration than to refer you to the case of **Rhodes v. Marengo County Bank, supra.** As application of the principles therein set out to any particular state of facts should give you the information you desire.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 20, 1935

Hon. Saxon P. Poyner,
Judge of Probate,
Houston County,
Dothan, Alabama.

In counties having 75,000 population or less clerk of Jury Board shall work under direction of the Jury Board and shall be paid for his services only when actually engaged in performing his duties. The Jury Board has authority to direct the work and prescribe the time which the clerk is to spend in performing his duties.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I acknowledge receipt of your letter of November 5, 1935 in which you state:

"Kindly refer to House Bill No. 70, Page 55, Acts of 1931 and Amendment thereto, House Bill No. 247, Page 136, Acts of 1933, and advise as to the following:

"Act of 1931 provides for the employment of a clerk of the Jury Board. The Act of 1933 amends the Act of 1931 in so far as salary of the members of the Jury Board are concerned, limiting same to not more than $100.00 each per year which at $5.00 per day is a maximum number of twenty working days. Please advise if these Acts construed together places any limitation as to time on the clerk."

I have carefully examined Act No. 47, H. B. 70 approved February 20, 1931 (Acts 1931 p. 55) and Act No. 146, H. B. 247, approved April 19, 1933 (Acts 1933, p. 136), and it is my opinion that the limitations placed on the Clerk of the Jury Board are that he shall work under the direction of the Jury Board and shall be paid only when actually engaged in performing his duties. The statute requires the clerk to work under the direction of the Jury Board. The phrase "under the direction of the Jury Board" is an expression in general terms giving the Jury Board the right to supervise and control the work of the clerk and includes the right to limit the clerk as to the time spent in performing his duties.

The compensation of the clerk is governed entirely by Section 8 of Act No. 47, H. B. 70, approved February 20, 1931, (Acts 1931, p. 55), which is as follows:

"Section 8. In counties having seventy-five thousand population or less by the last federal census preceding the employment, the clerk of the Circuit Court may be employed as the clerk of the Jury Board and in such counties the clerk of the Jury Board whether he be the clerk of the court or not, shall be paid for his services rendered under the direction of the Jury Board the sum of Five Dollars ($5.00) per day while actually engaged in performing his duties, to be paid out of the county treasury upon the order of the President of the Jury Board. In counties having more than seventy-five thousand and less than two hundred thousand population according to the last or any subsequent federal census, the Board shall employ a clerk who shall hold no other office during the term of his employment and who shall be paid for his services rendered under the direction of the Jury Board, the sum of Five Dollars ($5.00) per day while

actually engaged in performing his duties, to be paid out of the county treasury upon the order of the President of the Jury Board. In counties having more than two hundred thousand population according to the last or any subsequent federal census, the Jury Board in any such county shall have authority to employ such clerical assistance as such Board deems necessary and proper, and may expend for such clerical assistance in compensation and in paying their reasonable and necessary expenses in performing the duties of their employment a sum not to exceed Four Hundred and Fifty Dollars ($450.00) per month to be paid out of the county treasury upon the order of the President of the Jury Board."

Section 8, supra, is in no way affected by Section 5 of said Act, as amended by Act No. 146, H. B. 247, approved April 19, 1933 (Acts 1933, p. 136) which fixed the maximum compensation of the Jury Board.

Biennial Report of Attorney General, 1930-1932, pp. 236, 639 and 1055; Biennial Report of Attorney General 1932-1934, p. 31.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 21, 1935.

Hon. J. E. Reid,
Clerk of the Circuit Court,
Jackson County,
Scottsboro, Alabama.

1. Lost jury or witness certificates may be paid on presenting proper affidavit to the Clerk.

2. Under House Bill 609 by O'Neal, the jury commission cannot be paid for their service in refilling jury box to meet the requirement of the United States Court in Scottsboro cases.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of November 5, 1935, in which you request my opinion as follows:

"A lot of the state witnesses and jurors have lost or gotten their certificate destroyed. If their name appears on the Clerk's receipt book and they make affidavit that certificate has been lost or destroyed and not sold, will it be legal to honor such affidavit?

"The Jackson County Jury box was filled in January of this year, but has recently been emptied and refilled for the special purpose of meeting the requirements of this particular case. Would payment of the jury commissioners be a legal charge against the funds appropriated by the state in this case?"

Answering your first question, I call your attention to an opinion of this office, Biennial Report 1928-30, opinion page 14: Here your question is answered fully. I enclose copy of same.

As to your second inquiry, my answer is in the negative. The Act you refer to, House Bill 609, by O'Neal, was not intended to pay charges in mat-

ters of this character. The general law fixes the amount jury commissions receive and provides this must be paid out of the County Treasury. Therefore, it must be paid in this way, and cannot be paid in any other.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 21, 1935.

Hon. G. H. Boyd, Register,
Circuit Court,
Jefferson County,
Birmingham, Alabama.

Register in Chancery making sale of property is bound under Section 404 of General Acts, 1919, page 447 to ascertain any unpaid taxes against said property which is a lien, then apply the proceeds of said sale first to the payment of said tax.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 30, 1935, in which you request my opinion as follows:

"I would appreciate an opinion on Section 404 of the 1919 General Acts, as shown on page 447, that is whether or not the words 'other officer" would include Register in Chancery.

"GENERAL ACTS, 1919, SECTION 404 PAGE 447.

"When any sheriff or other officer shall sell any property under execution or other process, or under any decree, judgment, or order of any court, it shall be his duty to ascertain what taxes are a lien upon such property, and upon a sale thereof, to first apply the proceeds of such sale to the payment of such taxes."

Your request should be answered in the affirmative. I call your attention to Section 404, (General Acts of Alabama 1919, page 447) which is as follows:

"When any sheriff or other officer shall sell any property under execution or other process, or under any decree, judgment, or order of any court, it shall be his duty to ascertain what taxes are a lien upon such property, and upon a sale thereof, to first apply the proceeds of such sale to the payment of such taxes."

Under the above quoted Section your inquiry should be answered in the affirmative. Where the above statute says "any other officer" this includes the Register in Chancery. When making a sale under any order or decree of court.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 22, 1935.

Hon. Hugh White, President,
Alabama Public Service Commission,
Montgomery, Alabama.

Public Service Commission should charge 15c per 100 words, plus certifying fee, for each and every certified copy of each order.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of November 7, 1935, in which you request my opinion as follows:

"Under the provisions of the recently enacted federal 'Motor Carrier Act, 1935' and the rules adopted by the Interstate Commerce Commission thereunder, those Common Carriers and Contract Carriers who make application to Interstate Commerce Commission for certificates or permits under the so-called 'Grandfather' clause of said Act, are required to attach to said applications certified copies of any orders of any State authorizing applicants' or their predecessors' operations and of any orders authorizing transfers of such authorities to applicants, said operations and authorities being those in effect on June 1, 1935, as to Common Carriers and on July 1, 1935, as to Contract Carriers.

"It is our information that for said purposes it is necessary that each applicant obtain four certified copies of each of said orders applicable to his operations.

"Those Common Carriers and Contract Carriers Applying to Interstate Commerce Commission for certificates or permits, as aforesaid, whose operations, or a portion of whose operations, were on June 1, 1935, or on July 1, 1935, authorized under orders of Alabama Public Service Commission, are commencing to place with this Commission their requests for four certified copies of each of said orders of this Commission. In other words, they are commencing to request that this Commission prepare four typewritten copies of each such order, each of said copies to be duly certified by this Commission, and said four certified copies of each said order to be delivered to said Carrier for use as aforesaid.

"In addition to those requests of the aforementioned nature which have already been placed with Commission, the Commission anticipates that in the near future it will receive a large number of such requests from a large number of Common Carriers and Contract Carriers, the aggregate number of copies so requested by all said Carriers to be quite large.

"An order of this Commission entered under the provisions of 'Alabama Motor Carrier Act of 1931' authorizing intrastate operations in Alabama by a motor transportation company under the provisions of said Act, is by said Act called a 'certificate of public convenience and necessity.' Section 5 of said 'Alabama Motor Carrier Act of 1931' provides, among other things, as follows: 'Miscellaneous fees shall be paid to the Commission hereunder as follows: * * * Application for the issuance of a duplicate certificate of public convenience and necessity three

dollars ($3.00). For copy of any record or part thereof, of the Commission, pertaining to motor transportation companies, per one hundred words or portion thereof, fifteen cents (00.15). * * * '

"This is to request that you, as Attorney General of Alabama, render this Commission your official opinion upon the following questions of law, viz: (1) What is the correct basis of charge to be made by this Commission for the preparation and certification by it of copies of orders constituting certificates of public convenience and necessity issued by it to motor transportation companies under the provisions of 'Alabama Motor Carrier Act of 1931' where said orders are requested by the aforesaid applicants before the Interstate Commerce Commission for use as aforesaid? (2) Where more than one certified copy of the same certificate of public convenience and necessity is requested and furnished, does the same basis of charge apply to each of said copies and, if not, please state the basis of charge for the additional copies. (3) Does the aforequoted provision of Section 5 of Alabama Motor Carrier Act of 1931 which prescribes the fee of $3.00 to be paid to this Commission in the case of application for the issuance of a duplicate certificate of public convenience and necessity, apply to every copy of such a certificate prepared and furnished by this Commission upon request placed with it therefor, regardless of the purpose for which said copy is to be used, and, if not, please state the classes of instances or circumstance in which said $3.00 fee applies. (4) Does the same basis of charge apply to the preparation and furnishing by this Commission of certified copies of an order by it transferring or amending such certificate of public convenience and necessity, as applies to certified copies of the original certificate?"

Since the Alabama Motor Carrier Act of 1931 makes reference both to "Duplicate" and to "copy of any record" it was evidently the intent of the Legislature to distinguish between the two, using them in the same sense as is found in Nelson v. Blakey (54 Ind. 29) where the Court says:

"A duplicate is an original instrument, just as much so as the original article of which it is a duplicate. It must be executed by the same parties, in the same manner, with the same formalities and must contain the same matter, as an original instrument; else, it is not a duplicate . . . A certified copy of a record of articles of association is not a duplicate of such articles. When a law requires, that a duplicate of a certificate of incorporation shall be filed in the office of the secretary of state, it is no compliance with the requirement of such law, to file in said office a certified copy of the record of such certificate."

Similarly in Burrill L. D. (quot. Wright v. Michigan Cent. R. Co., 130 Fed. 843, 846, 65 CCA 3271) we find:

"A duplicate... differs from a mere copy, in having all the validity of an original."

With this distinction in mind, I am of the opinion that your inquiries should be answered as follows:

1. As the applicants are requesting certified copies and not duplicates, the Commission should charge 15c per 100 words for each copy, plus the usual fee for certifying each copy.

2. Where more than one certified copy of the same certificate is requested, the same basis should apply to each and every copy, that is, if four copies are requested, each copy, whether an original or a carbon, should be charged for at the rate of 15c per hundred words plus the usual charge for certifying each copy, or four complete charges.

3. The $3.00 fee prescribed in Section 5 applies in every case where a **duplicate** certificate is issued, that is a certificate which would be marked "duplicate" but which would be executed with the same formalities as an original. Such a duplicate would be issued upon application, for instance, in case a carrier lost the original certificate and applied for a duplicate.

4. The same basis of charge set forth in answer to questions 1 and 2 applies to the preparation and furnishing of certified copies of each order whether transferring or amending a certificate of public convenience and necessity. That is, 15c per hundred words should be charged, plus a separate fee for certifying for each order of the Commission,—one certification being placed on each copy of a certificate, one on each copy of an amendment, and one on each copy of a transfer.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 22, 1935.

Hon. Henry S. Long, President,
State Tax Commission,
Capitol.

License Inspectors held entitled to penalty of 15% of license payable to the Probate Judges in cases of delinquency.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of recent date in which you state:

"Section 353 page 376 of House Bill 324 provided for the appointment and compensation of License Inspectors.

"Sub-section C, of said Section 353, provides for the imposition of a penalty of fifteen (15) per cent, together with interest from date of delinquency.

"Sub-section E, of Section 353, provides that 'the Probate Judge shall file report to the Comptroller and Tax Commission showing the amount of such penalties collected, from whom, and for what, the amounts paid to the License Inspector and the amount remitted, * * * '.

"Sub-section F, of Section 353, provides that the License Inspector in criminal prosecutions will be paid fifteen (15%) per cent of the fine of penalty thereafter imposed.

"Section 359 of the Compilation of the Revenue Laws of Alabama, 1929, specifically provides that the License Inspector shall be entitled to the penalties imposed on delinquents for performing the duties required by this Section.

"House Bill 324, Section 353, referred to in first above paragraph, provides for the payment of the penalty to the License Inspector only by implication. House Bill 324 does not repeal the provision under Section 72 of the Acts of 1927, p. 139 where it is not in conflict with the provisions thereof.

"In order to avoid any misinterpretation by the Probate Judges of the State in making settlements with the License Inspectors, I request your formal opinion as to whether or not the License Inspector under the provisions of the new Revenue Bill (H. B. 324), will be entitled to the penalties imposed on delinquents."

I have carefully considered Section 353 in its entirety and in the light of the previous history of the law with reference to the penalties which have heretofore been payable to the License Inspector. I will briefly recapitulate. Under the Act of 1919 the penalty of 15% of the amount of license was payable to the License Inspector in all cases in which he had reported the delinquency to the Probate Judge. The Act of 1923 relating particularly to motor vehicles, but which was held in the case of Stewart v. Gilliland, 219 Ala. 32; 121 So. 35, to imply a repeal of the 1919 Act, provided that the License Inspector should cite the delinquent to appear before him and if the license was found to be due, then to report such delinquency to the Probate Judge. This was held as a necessary precedent before payment of the penalty could be made. The 1927 Act, which was passed prior to the Gilliland case, followed closely the language of the 1923 Act, and presumable was subject to the same construction. In 1931 the Act was amended which amendment applied only to Jefferson County, which in effect carried it back to the original 1919 Act and made the payment of penalties due upon the report of delinquency to the Probate Judge. See Henry v. Tutwiler Hotel Operating Co. 162 So. 365.

Throughout the history of the Act, the penalty of 15% was for the benefit of License Inspector as well as a penalty to force the taxpayer to take out the license. The effect, however, was in some cases that persons who were actually cited and reported were subject to the penalty and those not cited and reported were not subject to the penalty. The payment of the penalty therefore, was precedent upon the delinquency coming to the notice of the License Inspector rather than for the delinquency itself.

The Legislature of 1935 clearly attempted to remove this inequality by making the payment of the penalty automatic in all cases of delinquency and making it unlawful for the Probate Judge to collect a license without the penalty. It is therefore apparent that the penalty is payable in all cases of delinquency.

From an examination of the Act of 1927, which was the last Act of statewide application prior to the 1935 Act, it will be found that the duties of the License Inspector under both Acts are closely parallel and almost dovetail. Under both statutes, he is required to examine the stubs of the Probate Judge and from such other information that he can avail himself to determine what persons are delinquent in the payment of privilege or motor vehicle licenses and cite them to appear before the Probate Judge to take out the license, to report the delinquency to the Probate Judge and ultimately, if such methods are unavailable, to institute criminal proceedings. In fact, both statutes say that criminal proceedings may be instituted in the first instance in case of emergency.

In neither Act is there any provision for the payment to the License Inspector of any other salary or compensation than out of the penalties accruing from delinquent licenses. Under the 1927, the 1923 and the 1919 and the 1931 Acts cited above, it was plainly provided that the 15% penalty should be paid to the License Inspector. It was likewise provided that where criminal proceedings were begun, that 15% of the fine or penalty imposed should be paid to the License Inspector. The latter provision appears in the 1935 Act, the former does not, except by implication. That there is such implication I think is to be found in the following provisions:

> "Subsection (e). The Probate Judge in remitting such penalties shall file report with the Comptroller and with the State Tax Commission showing the amount of such penalties collected, from whom and for what, the amounts paid to the License Inspector and the amount remitted provided that in counties where the License Inspector is payable on a salary basis, all fees and penalties shall be paid into the State Treasury."

There is no provision for paying the fees and penalties into the State Treasury except in counties where the License Inspector is payable on a salary basis, which provision is to be found in Sub-section (i) of Section 353.

Subsection (i) provides:

> "In counties of over two hundred thousand population the State Tax Commission shall fix the compensation of License Inspectors and shall at the time of appointment and annually thereafter fix the compensation and allowance of expenses of the License Inspector for such county. **All commissions and fees which would be payable to the License Inspector** shall be paid to the Probate Judge, the Commissioner of Licenses, into the State Treasury."

It seems reasonably clear that the Legislature did not intend for the fees and penalties to be paid into the State Treasury except in counties of over two hundred thousand inhabitants. Neither did it provide for the payment of such fees and penalties into the County Treasury.

The License Inspector, as pointed out, has been an officer throughout the history of the law whose entire compensation has been paid out of fees and penalties and whose duties under the new Act are substantially the same as those provided by the old Act. Practically the same penalties and fees are provided and, with the exception that the penalty is payable upon delinquency, the administration and enforcement is the same. The late John Mooring often used the expression that "The License Inspector is the hub upon which the enforcement of the license laws turn." This has been recognized generally and was clearly recognized by the Legislature in so carefully providing his duties. In fact, the 1933 Act with particular reference to motor vehicles adds provisions, the purpose of which are to better enable the License Inspector to prevent fraud, although it imposes an additional duty on him thereby.

From reading the statute as a whole, and particularly the two provisions which are quoted in the light of the past history, I am not persuaded that there is not sufficient authority contained in Section 353 to authorize the payment by the Probate Judge to the License Inspector of the penalties of 15% collected in cases of delinquency.

While the matter is not entirely free from doubt, it would seem that the general intent of the Legislature to effect this is reasonably clear and can be gathered from the language of the statute read in the light of its history and contemperaneous circumstances. That the intention of the Legislature gathered from the entire instrument is the law, is well settled by the following cases:

"The fundamental rule of construction is to ascertain and give effect to the intention of the Legislature as expressed in the statute.—Ala. 1922. Street v. Cloe, 93 So. 591, 207 Ala. 631.

"Ala. App. 1925. Fundamental rule in construction of statute is to ascertain and give effect to Legislature's intention, expressed in statute, without assuming legislative authority, but where language is of doubtful meaning or adherence to strict letter would lead to injustice, absurdity or contradictory provisions, courts must ascertain true meaning, or, if impossible, give reasonable construction consistent with legal principles.—Allgood v. State, 104 So. 847, 20 Ala. App. 665, certiorari granted Ex parte Allgood 104 So. 851, 213 Ala. 426.

"Ala. 1909. The courts in construing a statute, must look to the context, the spirit and the whole of the statute, as well as other statutes, to reach the true intent of the Legislature." City of Birmingham v. Southern Express Co., 51 So. 159, 164 Ala. 520.

"A thing within the intention of the enactors of a statute is as much within the statute as if it were within the letter thereof; and a thing within the letter is not within the statute, unless within the intention." —Id.

"Ala. App. 1911. Courts in construing a statute will give it that construction which will **effectuate the purpose** of the Legislature in passing it."—Lynn v. Broyles Furniture Co., 57 So. 122, 3 Ala. App. 634.

"Ala. 1914. A literal interpretation which would defeat the manifest purposes of a statute and permit evasions will not be adopted if any other reasonable construction consistent with such purpose can be given to it."—Brown v. Pittsburgh Life & Trust Co., 65 So. 699, 10 Ala. App. 614, judgment reversed Ex parte Pittsburgh Life & Trust Co., 66 So. 489.

"Ala. 1905. In interpreting a law it is legitimate to take into consideration the history which led up to its enactment, the surrounding circumstances, and the ends intended to be accomplished thereby."—Prowell v. State, 39 So. 164, 142 Ala. 80.

"Ala. 1909. Statutes on a subject should be construed together so as to produce a harmonious system, if possible."—City of Birmingham v. Southern Express Co., 51 So. 159, 164 Ala. 529.

"Construction that will lead to false results not intended should be avoided."—214 N. Y. S. 113. Allgood v. State, 20 Ala. App. 665, 104 So. 847.

"Intent must prevail over literal wording." 307 Mo. 49, 269 S. W. 623, 242 P. 823.

"Rule of strict construction is subordinate to rule of reasonable sensible construction having in view effectuation of legislative purpose."—131 S. E. 421 (S. C.)

"That system is intended to be workable is cardinal rule in interpreting original provisions."—215 N. Y. S. 116.

"In question of legislative intent courts are bound by no rule that hinders discovery of rational genuine intent of legislature."—205 N. Y. S. 689.

"Statutes not construed to require impossibilities or to lead to absurd results, if capable of any other reasonable interpretation."—263 S. W. 526 (Mo.)

"To ascertain legislative intent court should use all aids available and not limit itself to legal maxims."—186 N. W. 485 (Mich.)

I therefore hold that the penalty of 15% collected by the Probate Judge in cases of delinquency is payable to the License Inspector.

The statute of 1935 contains express provision for the payment of 15% of the fine or penalty imposed in cases of criminal prosecution.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 22, 1935.

Hon. Eugene H. Hawkins,
Judge of Probate, Jefferson County,
Birmingham, Alabama.

Taxation—Redemption. Under 1935 Revenue Act:

1. Acts of the Legislature changing the conditions applying to redemption of lands from sales made to the State for taxes, including the waiver of "interest" are not in violation of Section 100 of the Constitution.

2. "Penalties" as used in Section 291 is used interchangeably with "interest."

3. Officers' fees and advertising and other costs must be paid on redemption.

4. A person redeeming on the installment basis provided by Section 291 may also make a partial redemption.

5. Act No. 526, known as the Lusk Act, amending Section 269 held not to repeal Section 291 but is limited to sales made subsequent to January 1, 1935.

6. A person redeeming under the provisions of Section 291 from a sale to the State made prior to January 1, 1935 may redeem without the payment of interest and penalties.

7. Such redemption without the payment of interest or penalties will be made either on a cash basis or on the installment payment plan.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of October 8th, making the following inquiry:

"Please refer to Sections 269 and 291 of the Revenue Law of 1935, and advise me as follows:

"First: Whether or not a person on redeeming property sold at tax sale prior to January 1, 1935, is liable for interest on subsequent taxes from the date they were delinquent, and on the amount for which the property was sold from the date of the sale.

"Second: Please advise what constitutes 'penalties.'

"Third: Whether or not officer's fees shall be collected on redemptions.

"Fourth: Whether or not a person on redeeming on the installment basis, may pay the subsequent installments at any time, or whether he is required to wait one year before paying each installment.

"Fifth: Whether or not the redemptioner is required to pay interest on subsequent taxes if he redeems for cash, but is allowed to redeem on the installment basis without payment of interest.

"Sixth: Whether or not there may be a partial redemption by the owner from tax sale on the installment basis.

"I enclose copy of opinion rendered by Mr. Ernest Matthews, County Attorney for Jefferson County, for your information. However, I feel that this matter should be passed upon by you."

I also have a letter from Mr. Henry S. Long, President State Tax Commission, dated October 29th, inquiring if the term "with interest thereon at the legal rate of interest prevailing at the time said property was sold" as used in House Bill 835 by Lusk amending Section 269 of the Revenue Bill of 1935 has reference to the rate of interest provided by Section 3110 of the Code of 1923 as amended by Act No. 19 approved Septemeber 15, 1932 or to Section 8563 of the Code as amended by Act No. 37, approved February 9, 1935.

I also have several other inquiries which will be referred to particularly hereafter, all bearing on the general question of redemption. I am likewise in receipt of numerous letters and arguments as to the proper construction of the Chapter of the Revenue Act of 1935 relating to redemptions. I have endeavored to give all careful consideration but think it advisable so far as possible to make the several inquiries the subject of one opinion, they all relating to the same subject matter.

A good deal has been said in these letters about legislative intent and the campaign pledges of the Governor and other extrinsic matters. While these things can be of help in shedding general light on the history of enactments and in cases of doubt are useful, yet the legislative intent as expressed in the statute controls, and such intent must be gathered from the language of the statute itself. Only in cases of extreme doubt can we look to the "condition of the times," the "evil sought to be remedied," and similar extrinsic aids in construing a statute.

The laws relating to redemption of lands from tax sales were largely in the 1923 Code. They appear in the 1929 Revenue Compilation and were all incorporated in the 1919 Revenue Act. I may say that they had functioned reasonably well until the depression, beginning in Ooctober 1929 and ending, ??? During the legislative sessions of 1931-1932 and 1933 certain acts were

passed attempting to ameliorate in certain particulars these provisions. One of these acts is that referred to in the letter of Mr. Long. Another extended the period of redemption from two to three years and a third provided that upon redemption, if it appeared that taxes had actually been paid on the property for any of the years subsequent to the time it was sold to the State that credit should be given for such payments. When the Act of 1932, page 17, Act No. 19 (approved September 13, 1932) was enacted, the question of its being in violation of Section 100 of the Constitution was raised. Hon. Thomas E. Knight, Jr., the then Attorney General, in an opinion appearing in Biennial Report 1932-1934, page 404, held that as to sales to the State Section 100 of the Constitution was not violated. It appears to me that this conclusion was sound. Section 100 prohibits the release etc., of an obligation or liability owing to the State. This has been held to apply to taxes. Union Bank & Trust Co. v. Phelps, 153 So. 644. However, under our system, a tax liability takes two forms, one a personal liability on the part of the taxpayer which may be enforced by a suit, garnishment or other personal remedy. The statute also gives the State a lien on the property of the taxpayer for taxes due which may be enforced by a proceeding in rem against the property, of which proceeding, however, the taxpayer is given notice. It is presumed, though the failure to do so is not fatal, that personal remedies, including a levy on personal property, have been exhausted before application is made for the sale of the real estate. After hearing and judgment before the Probate Court of the County, the lands are ordered sold to satisfy the taxes, officers' fees and costs. In obedience to this order the Tax Collector advises the sale and the land are sold to the State, the State's bid covering all taxes and interest to date, officers' fee, advertising or other costs. Presuming a valid sale, and any discussion is necessarily made upon the hypothesis of a valid sale the State has foreclosed its lien and the judgment which includes the tax is satisfied and the title to the property passes to the State absolutely.

> "If all the requirements of law as to the preliminary proceedings have been complied with, the tax deed conveys an absolute title and the purchaser cannot be divested of it, although he may have paid for it a sum altogether disproportionate to the real value of the land. Tiedman on Real Property (2nd Ed) Section 760, citing Harding v. Tibbits, 15 Wis. 232, Wofford v. McKenna, 23 Tex. 43."

The State, however, is not in the land business nor presumably does it desire to permanently deprive its citizens of their property or means of livelihood. The Legislature, therefore, as the policy shaping, as well as the lawmaking department has made provision that the former owner (and certain other named persons) can redeem or repurchase such lands upon certain conditions. As I construe this action, it is but an act of grace which the Legislature can change or alter at will. This is certainly true as to future sales and I believe likewise as to past sales to the State. I do not take it that the right of redemption is a property right.

It is comparable in some respects, I think, to the statutory right of redemption from a mortgage foreclosure. Our courts have held this to be a mere personal privilege and purely a statutory right. Wood v. Vogel, 204 Ala. 692, Newburn v. Bass, 82 Ala. 622. In fact, the Legislature has shown by past enactments that this right of redemption is not a right which can be transferred or exercised as property, but the right is limited to those whom the Legislature has specifically named. This emphazis the conclusion that the right of redemption is a privilege conferred rather than a vested right.

On the other hand, where private individuals have purchased land at tax sales, they acquire the property subject to the conditions which the law imposed at the time of the sale and their rights are fixed and become vested thereby. The Legislature cannot, as held by the former Attorney General, thereafter change the amount to which an individual purchaser at a tax sale is entitled upon redemption. Of course, such purchaser can accept such sum as he sees fit.

Except for Section 100, there would be no question but that the Legislature can do likewise, and while there is not unanimity of opinion on this, I am persuaded that reason and logic support the view that the sale of the lands to satisfy tax obligation and the purchase by the State therefor, **satisfied** the debt or tax liability due to the State. After the sale to the State there can be no new assessment or tax liability. While the amounts required to be paid upon redemption for the years subsequent to the sale are loosely termed annual taxes, such terminology is merely one of convenience, to describe the annual **amounts** which the Legislature has declared shall be paid. The fact that the Legislature has endeavored to have such amounts approximate what the annual taxes would have been if the property had been individually owned, does not convert such "amounts" into "taxes" or the annual valuations provided by the statutes into "assessments."

As the Act of 1932 referred to and the 1935 Revenue Act make many changes in the conditions applying to the redemption of lands sold to the State for taxes, an examination into the Legislature's authority to make such changes appeared necessary before discussing particular questions. As heretofore shown, it is my conclusion that as to lands sold for taxes and purchased by the State in satisfaction thereof, the Legislature may change the conditions required for redemption and that such changes do not violate Section 100 of the Constitution.

Of the six questions propounded by you, the second, third, and sixth can be answered without difficulty. I list them by number:

2. "Penalties." This is evidently a catchall phrase used perhaps as a precaution in case the "interest" payable on taxes or on redemption should be held to be in the nature of a penalty rather than strictly an interest charge.

3. Officers' fees must be collected. They are not taxes, interest or penalties. They accrue to the officer for the performance of certain services. Section 269, both originally and as amended, includes them as one of the items payable, and Section 291 contains no contrary provision.

6. I find nothing in the terms of Section 291 indicating that this application is limited to cases where all the property is redeemed and, in the absence of such language, it is my opinion that the provisions of Section 291 apply to partial redemptions. Of course, the requirements of Section 271 271-1 must be complied with as in other cases.

The question perhaps of prime importance in your inquiry is number one, as follows:

> "First: Whether or not a person on redeeming property sold at tax sale prior to January 1, 1935, is liable for interest on subsequent taxes from the date they were delinquent, and on the amount for which the property was sold from the date of the sale."

To the same subject is addressed the following letter from the State Tax Commission:

"It is requested that you give me your formal opinion as to whether or not the term 'with interest thereon at the legal rate of interest prevailing at the time said property was sold for taxes' as used in House Bill 835 by Lusk, approved September 14, 1935 (Act No. 526) has reference to the rate of interest fixed by Section 3110 of the Code of 1923 and the Amendment thereto approved September 15, 1932 (Act No. 19 by Walker), or whether it has reference to the interest rate fixed by Section 8563 of the Code of 1923 and the Amendment thereto approved February 9, 1935 (Act No. 37 by Wellborn).

"As the provisions found in House Bill 835 deal with the redemption of real estate sold for taxes and bid in by the State and as Section 3110 and the Amendment thereto dealt with the same subject, and in fact have been superceded by said House Bill 835, I take it that the provision refers to those sections dealing with the same subject."

But for the Lusk Amendment to Section 291, the answer to your inquiry would be comparatively easy. Section 291 specifically relieved such person of the payment of interest if redeemed upon the partial payment plan. This Section provides:

"Whenever any real estate has prior to January 1, 1935, been sold for taxes and bid in by the State at tax sale, the same may be redeemed in the same manner as heretofore provided for sales made after January 1, 1935, except that the following additional provisions shall apply. All persons having the right to redeem, shall have four years from the date of sale to redeem and such redemption shall be made as in other cases, except that the party desiring to redeem may pay the amount of accrued taxes in four equal installments without interest or penalties. Any person having the right to redeem any property sold to the State for taxes, and who desires to redeem under the provisions hereof, shall, before January 1, 1937, make application to the State Land Commissioner and to the Probate Judge of the County where the real estate is situated, and shall deposit with the Probate Judge one-fourth of the amount of accrued taxes without interest and penalties and annually thereafter, shall pay one-fourth of said sum to the Probate Judge together with all taxes which may become due subsequent to such first payment until the whole amount required has been paid, and thereupon certificate of redemption shall be issued as in other cases."

Section 269, as originally passed, was in part as follows:

"Section 269. (a) In order to obtain the redemption of land from tax sales, where the same has been sold to the State, the party desiring to make such redemption shall deposit with the Judge of Probate of the county in which the land is situated the amount of money for which the lands were sold, with interest thereon at the rate of six per cent per annum from the date of sale, together with the amount of all taxes found to be due on such lands since the date of sale, as provided herein, with interest thereon at the rate of six per cent per annum from the maturity of such taxes, and all costs and fees due to officers as set out in the following sections."

This and intervening sections were concluded by Section 290, providing that the foregoing Sections (268-289 inclusive) applied to sales made subsequent to January 1, 1935. While Section 294, providing:

> "That the provisions of the foregoing sections applying to sales of real estate to the State for taxes made prior to January 1, 1935, are cumulative and in addition to other methods, and a party desiring to redeem may redeem in the manner provided for for sales made subsequent to January 1, 1935."

referring to Sections 291, 292 and 293, and the opening paragraph of Section 291, casts some doubt upon the conclusion, from reading the whole chapter in the light of current history, I am of the opinion that the Legislature was attempting by the several provisions to definitely provide for redemptions of two classes, to-wit, those applicable to sales made prior to January 1, 1935 and those applicable to sales made subsequent to January 1, 1935. While in reaching this conclusion I am somewhat aided by extrinsic aids to construction, such as the panic conditions existing for the years immediately prior to 1935, the large number of tax sales to the State occurring during those years and the general desire to ameliorate the hardships of the statute and the desire to get property back on the tax rolls and similar matters of general and common knowledge, yet I am of the opinion that without such extrinsic aids, the acts internally show the legislative purpose and indicate that this purpose was the pervading thought through the whole of the Chapter.

If my conclusions as to the nature of redemption and the power of the Legislature as above outlined are sound, the Legislature can make such classifications. It is not in fact making distinctions in the rights of subjects of the State, it is merely giving certain conditions (for reasons ample to itself) for redemtpion which shall apply to sales made to the State prior to a certain date different from the conditions applicable to sales to the State made subsequent to such date.

It is therefore my conclusion that prior to the Lusk Amendment to Section 269 (Act No. 526, No. 835, approved September 14, 1935) the right to redeem from sales made prior to January 1, 1935 without the payment of interest, so far as those made on the partial payment plan at least is concerned was clear. (I will hereafter discuss cash redemptions from such sales.)

The Act approved September 14, 1935 materially changed Section 269 in this respect (and others). Section 269 (original):

> "In order to obtain the redemption of land from tax sales where the same has been sold to the State."

This, followed by Section 290, makes it reasonably clear that such sales were those subsequent to January 1, 1935. Act No. 526, however, reads:

> "In order to obtain the redemption of land from tax sales where the same has been **heretofore** or **hereafter** sold to the State."

The Revenue Act, with certain exceptions not here applicable, became effective October 1, 1935, though approved July 10, 1935. Section 269, therefore, was not in operation when Act No. 526 was passed, which Act was declared to be effective upon approval by the Governor, which approval was dated September 14, 1935. Does the word "heretofore," as used in Act 526, in effect repeal Section 291 as to the release of interest? If it does, then all redemptions

bear interest whether made on the partial or cash payment plan or whether such sales were prior or subsequent to January 1, 1935. Ordinarily, an Act last passed will govern over a prior Act where the same are conflicting. However, in the case of State v. Sawyer, 36 So. 545, 139 Ala. 138 where two Acts were passed simultaneously, one effective immediately and one effective thirty days after passage, the one last effective was held to repeal the one immediately effective. However, I do not think that there is such conflict between Section 269, as amended and Section 291 as to work a repeal of Section 291. In the present case, Section 269 by virtue of the amendment, became effective September 14, 1935. The remainder of the Chapter became effective October 1, 1935, including Section 290, which declares that the foregoing Sections 268-289, inclusive, apply to sales subsequent to January 1st.

It seems, therefore, that the remainder of the Chapter being effective subsequent to the effective date of the Lusk Act modifies and limits its application; that it must be read along with the body of law of which it is a part, otherwise it is a statute sui generis, a sort of lone wolf, or at least a bad boy throwing a monkey wrench, labeled **"heretofore,"** into the carefully built machinery applying to sales made to the State prior to January 1, 1935. In the absence of limiting language, **"heretofore"** is an expression of infinity, but construed with the context, it may not be. While the matter is not free from doubt, taking into consideration the remedial nature of the statute and the purposes sought, I am persuaded that "heretofore" as used in the amended Section 269 is limited by Section 290 and applies to the period between the approval of the Act and January 1, 1935. Under the law as then existing sales for taxes could easily have been made subsequent to January 1, 1935 and prior to the adoption of the Act.

"That two statutes relating to public health and offices connected therewith were passed at the same session within a few days creates a strong presumption against conflict."

State v. Duncan, 50 So. 265, 162 Ala. 196.

"Again two statutes relating to the subject of taxation or license or privilege taxes on trades enacted by the same Legislature, and neither expressly repealing the other, must both be given effect if practicable and consistent with sound construction or good reason."

City of Birmingham v. Southern Express Co., 51 So. 159, 164 Ala. 529.

"If effect can be given consistent with the legislative intent to a part of the provisions of an old statute, without violation of the provisions of the new, repeal by implication of the old statute by the new will be held to be partial only."

Levy Aronson and White v. Jones, 93 So. 773, 208 Ala. 104.

"Repeal by implication is not favored and will not be declared unless there is a real repugnance and no reasonable field for the operation of both statutes without displacing the provisions of either."

Custin v. White, 99 So. 54, 19 Ala. App. 558.

"General law cannot be held to be repealed by a later one if it be possible to reconcile two statutes so as to permit both to stand without violating sound principles of construction."

Board of Revenue v. Johnson, 76 So. 859, 200 Ala. 533.

Applying these principles, it appears that there is a field of operation for both as I have attempted to show, and that Section 291 is not repealed by the amendment to Section 269.

Having thus concluded, the next inquiry is the meaning and intent of Section 291. It provides first:

> "Whenever any real estate has prior to January 1, 1935, been sold for taxes and bid in by the State at tax sale, the same may be redeemed in the same manner as heretofore provided for sales made after January 1, 1935, except that the following additional provisions shall apply."

I take it that the reference here is primarily to the administrative methods for redemption which include, of course, the methods of determining the amount payable which are the same as the preceding statutes except the amount is the altered, as later shown. The changes noted are:

First: That persons are given four years to redeem from tax sales made prior to January 1, 1935, whereas the period for redemption from sales made subsequent thereto is three years. (Sections 279, 281 and 283)

Second: The party desiring to redeem **may pay** the amount of accrued taxes in four equal installments instead of on a cash basis. This provision is as follows:

> "Section 291. Whenever any real estate has prior to January 1, 1935, been sold for taxes and bid in by the State at tax sale, the same may be redeemed in the same manner as heretofore provided for sales made after January 1, 1935, except that the following additional provisions shall apply: All persons having the right to redeem, shall have four years from the date of sale to redeem and such redemption shall be made as in other cases, except that the party desiring to redeem may pay the amount of accrued taxes in four equal installments without interest or penalties. Any person having the right to redeem any property sold to the State for taxes, and who desires to redeem under the provisions hereof, shall, before January 1, 1937, make application to the State Land Commissioner and to the Probate Judge of the County where the real estate is situated, and shall deposit with the Probate Judge one-fourth of the amount of accrued taxes without interest and penalties and annually thereafter, shall pay one-fourth of said sum to the Probate Judge together with all taxes which may become due subsequent to such first payment until the whole amount required has been paid, and thereupon certificate of redemption shall be issued as in other cases."

Section 292 provides in detail for the payment of such annual installments and the foreclosure of the State's lien upon failure to do so.

It is reasonably clear, I think, that the term "without interest or penalties" refers to the amount for which the property sold plus the annual accumulations since such sale, which, as I have pointed out, are not taxes, but amounts fixed by the Legislature. "Without interest or penalties" modifies and refer to "accrued taxes" rather than "installments." As above observed this is true where the statute is strictly followed and redemption is made upon the partial payment plan.

Does this permission to pay without interest apply to parties who desire to redeem in cash and not avail themselves of the four year partial payment plan? The unreason of charging a person interest who pays cash and not

requiring interest of a person who takes four years to pay argues more strongly that it does. On the other hand, it has been pointed out that the statute provides that the party redeeming shall deposit one-fourth of the amount required and "annually thereafter shall pay, etc.". This has been argued to be a mandatory requirement that such payment shall be annual and that in order to be exempted from the payment of interest the partial payment plan with payments on an annual basis must be strictly followed.

I am not convinced that so strict a limitation can be placed on the language. In the first place, the language is "may pay." This is clearly permissive. The parties "shall have four years." This is an outside limitation, I think, not a specific command that such parties must take four years whether they so desire or not. The words "annually thereafter" do not convey to my mind an absolute requirement that the payments must be annual and can be made in no other way. Coupled with Section 292, it appears to me that unless a party makes the quarterly payments at least annually, he will be in default. I do not think the Legislature intended to say to a redemptioner: "If once you elect to follow the partial payment plan, you cannot pay up all the installments and release the property entirely except by making a payment of twenty-five per cent (25%) annually." Such a conclusion is opposed to sound logic as well as the purpose sought.

It is, therefore, my conclusion that as to property sold to the State for taxes prior to January 1, 1935, if application is made within four years from the date of sale, redemption is authorized by Section 291 without the payment of interest and this is true whether such redemption be for cash or on the partial payment plan. I think further that should a person paying the first installment desire to complete his payments in less time than allowed, he has that right, though such payment must be in multiples of one-fourth of the total amount originally due.

The foregoing answers your various inquiries fully, I believe.

In answer to the inquiry of the State Tax Commission of October 9th above referred to, it is my opinion that interest as used in H. B. 835, Act No. 526 amending Section 269, refers to the interest rate provided in the redemption statutes. Throughout the history of the statutes, special provisions as to this, which is more in the nature of a penalty than interest, have been made and, as pointed out above, this is not interest on a debt owed but one of the conditions which the Legislature has required for the redemption of property. However, it may be that the foregoing opinion has rendered this request largely functus officio.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 22, 1935.

Hon. Henry S. Long, President,
State Tax Commission,
Capitol.

Taxes—Redemption—Senate Bill No. 2 approved September 15, 1932, allowing credit on redemption for taxes actually paid on lands sold to the state for years subsequent to such sale, held to apply to all redemptions made subsequent to October 1, 1935 of lands sold prior thereto, where such payments were actually made prior to October 1, 1935.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"Senate Bill No. 2 by Walker, approved September 15, 1932, provided for the redemption of lands sold for taxes and bid in by the State prior to the effective date of House Bill 324 which was approved July 10, 1935. Said Senate Bill No. 2 contained a proviso to the effect that the person redeeming the land from tax sale was not required to pay the taxes accruing subsequent to the sale if such taxes had been properly assessed and paid to the county tax collector.

"Section 269 of House Bill 324 approved July 10, 1935, which became effective October 1, 1935, contains no such proviso. On the other hand, said Section 269 contains a provision to the effect that the person redeeming lands from the State shall deposit with the Judge of Probate the amount of money for which the lands were sold with interest thereon from date of sale 'together with the amount of all taxes found to be due on such lands since the date of sale, as provided herein.' Subdivision (b) of Section 260 provides the method of determining the amount of taxes found to be due on the property and apparently does not take into consideration the fact that some of the subsequent taxes may have been paid to the tax collector since the property was bid in by the State.

"We ask your formal opinion as to whether or not the Judge of Probate, in allowing the redemption of lands bid in for the State under the provisions of Section 269 supra, should be required to collect taxes for every year subsequent to the tax sale or whether he should leave off the collection of any taxes which may have been paid to the county tax collector since the date of sale.

"You will bear in mind that Section 247 provides for the method of assessing taxes on lands which have been bid in by the State and such Section does not contemplate a regular assessment in the usual manner. Thanking you for your early attention to this matter, we are."

While the statutes are in some confusion, I cannot believe that the legislature intended a double payment for the years subsequent to the tax year, the taxes for which the land was sold.

Prior to the Act of 1932, there was a definite method of determining the amount to be annually paid for the years subsequent to the sale to the State (278 Comp. 1929). (This proviso is appears as Section 247 of the 1935 Revenue Act. However this provision is, for redemption purposes at least, made ineffective if not actually repealed by H. 835 by Lusk approved September 14, 1935, amending Section 269 of the 1935 Revenue Act).

This general method was not changed by the Walker Act of 1932. This Act merely affected Section 278 of the 1929 Comp. in case the property had been assessed and the taxes actually paid. This Act continued in effect until October 1, 1935.

The new Revenue Act contains no such provision and hence for the future repeals it. It is necessary though to give effect to the Act of 1932 up to October 1, 1932 up to October 1, 1935.

It is therefore my opinion that in allowing redemptions after October 1, 1935 of property sold prior thereto, if it appear that lands sold to the State have actually been assessed and the taxes paid thereon for any years prior to October 1, 1935, credit should be given on redemption for such annual payments. This is not contrary in spirit at least to the annual valuation provisions of Section 269 as amended.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 22, 1935.

Hon. Henry S. Long, President,
The State Tax Commission,
Capitol.

Attention: Mr. Harry Simon.

Licenses—Liability for plumber's license under Schedule 110 of Section 348 of Revenue Act of 1935, is based on doing business as a plumber rather than on having an established place of business.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of November 4, 1935, in which you request my opinion as to the liability of a person doing plumbing work, but who does not maintain a place of business nor does he maintain a shop.

In answer to your inquiry, I am of the opinion that the liability for a plumber's license under Schedule 110 of Section 348 of the Revenue Act of 1935, is based on "doing business as a plumber" and not the maintaining of an established place of business.

Schedule 110 of Section 348 of the Revenue Act of 1935, provides as fol lows:

"SCHEDULE 110. Each person doing business as a plumber, steam fitter, or operator of a tin shop or roofing shop, in towns or cities of fifty thousand inhabitants, or over, twenty-five dollars ($25.00); in cities and towns of ten thousand inhabitants and less than fifty thousand inhabitants, fifteen dollars ($15.00); in cities and towns of less than ten thousand inhabitants, ten dollars ($10.00); in all other places whether incorporated or not, five dollars ($5.00)."

The schedule above quoted provides for a license upon "each person doing business as a plumber." The fact as to whether or not there is an established place of business is immaterial.—**Biennial Report of Attorney General,** 1930-1932, page 413.

The opinion above cited held that where a person is doing business as a plumber, he is liable for a license wherever he is doing business whether he has an established place of business in such town or not. Said opinion interpreted Schedule 87 of Section 361 of the Revenue Act of 1919, which schedule is in substance the same as the one under consideration.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 22, 1935.

Hon. N. P. Tompkins,
Judge of Probate, Colbert County,
Tuscumbia, Alabama.

Judge of Probate allowed a commission of 2½% on all monies received on redemption of lands from tax sales under Section 276 of the Revenue Act of 1935.

He is likewise entitled to a fee of $1.00 for the issuance of deed to purchaser upon the surrender of the certificate as provided by Section 241.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 23, 1935, in which you state:

"Please kindly advise me what fee I will be allowed to collect under the new Revenue Law effective October 1st, 1935 and the Certificate of Redemption issued upon the redemption of real estate, and is the fee the same in cases where the State was the purchaser and in cases where a party other than the State is the purchaser?"

In reply I call your attention to Section 276 of the Revenue Act of 1935 which states in part that the Judge of Probate must remit the money collected on redemption and "upon all such money so paid over during the month of collection he is entitled to commission at the rate of 2½% which he may deduct therefrom, but he is not allowed any commissions on any money not so paid over." This applies only in cases where the State is the purchaser.

I also call to your attention Section 241 which authorizes the payment of a fee of $1.00 upon the surrender of the certificate and the issuance of the deed to the purchaser.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 23, 1935.

Hon. W. D. Bishop, President,
County Commission of Jefferson County,
Birmingham, Alabama.

The salaries of the Probate Judge and the Sheriff of Jefferson County, after October 1, 1935, when the limitations of the Sparks Amendment became inoperative are determined by the last valid legislative Acts fixing such salaries.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter stating:

"Please advise the County Commission of Jefferson County as to the amount of compensation due the Sheriff and the Probate Judge of this County under the law that exists at this time.

"Permit me to refer you to the Act of the Legislature of 1931 fixing the compensation of the Sheriff of the County and also call your attention to the Sparks Amendment which should be construed in connection therewith.

"The Local Acts of 1933 fixes the amount of the compensation of the Sheriff of this County and that probably should be construed in the light of the Sparks Amendment.

"Your very prompt attention to this matter would be appreciated, in view of the fact that the payrolls of these two officials are pending the outcome of your opinion."

You state that the Local Acts of 1933 fixes the compensation of the Sheriff. I do not find such Act but I do find Local Acts 1933, p. 43 fixing the compensation of the Probate Judge, also General Acts 1931, p. 773, fixing the salary of the Sheriff.

The Sparks Amendment was passed March 9, 1933 was subsequently ratified and became effective September 1, 1933.

This amendment is as follows:

"ARTICLE XXIV. All provisions of the Constitution which prohibit or restrict the Legislature from decreasing or diminishing the salary, fees or compensation of any executive, legislature or judicial officer or of any public officer or of any officer holding any civil office of profit under this State or any County or Municipality thereof, whether elected or appointed, during the term for which he shall have been elected or appointed are hereby suspended until October 1, 1935. Provided that from and after the first day of the month next succeeding the date of the ratification and adoption of this amendment, no salary, compensation, fees or commissions paid to any officer under this State or any County or Municipality thereof, shall exceed the sum of Six Thousand Dollars per annum. **Said limitation of $6,000.00 to be inoperative after October 1, 1935.** Any Act of the Legislature heretofore adopted decreasing or diminishing the salary, fees or compensation of any such officer or officers, and which by its terms is to become effective after the expiration of the present term of any such officer or officers, shall, by virtue hereof, become effective from and after the first day of the month next succeeding the date of the ratification and adoption of this amendment; Provided, however, that should the Legislature adopt any other Act or Acts decreasing or diminishing the salary, fees or compensation of any such officer or officers during the term for which such officer or officers may have been elected or appointed in a larger amount such subsequent Act or Acts shall control. Any other Act of the Legislature adopted prior to October 1, 1935, decreasing or diminishing the salary, fees or compensation of any such officer or officers, during the term for which such officer or officers may have been elected or appointed, shall be effective from and after the first day of the month next succeeding the date of the ratification and adoption of this amendment, or from and after the adoption by the Legislature of any such Act decreasing or diminishing the salary, fees or compensation of such officer or officers." (Emphasis ours).

As a result of this amendment salaries to be paid all officers of the State, Counties and Municipalities were limited to $6,000.00 per annum. Irrespective of antecedent Acts of the Legislature, that this limitation applied from the

period September 1, 1933 through September 30, 1935, is I think free from doubt. This office has held that such amendment was self executing.

The present term of the Probate Judge and Sheriff began in January 1935. So, for a portion of the period of their term, they have under the limitation of the Sparks Amendment been paid not over $6,000.00 per annum.

As I take it, your inquiry comprehends the application of Section 281 of the Constitution to these facts.

Section 281 provides:

> "The salary, fees, or compensation of any officer holding any civil office of profit under this state or any county or municipality thereof, shall not be increased or diminished during the term for which he shall have been elected or appointed."

This prohibition is primarily directed at legislative action, and as a general proposition refers to compensation which has been fixed by law, that is by the Legislature.

In the present case the Legislature fixed a certain salary for the officers in question.

These were the salaries fixed by law which in the absence of the limitation of $6,000.00 in the Sparks Amendment, the officers were entitled to receive.

As I read the Sparks Amendment it merely suspended the provisions of Sections 68, 118, 150 and 281 of the Constitution prohibiting the Legislature from decreasing the salaries of officers during their terms, and attempted to make immediately effective such Acts, passed prior to October 1, 1935, which, because of those provisions of the Constitution could not otherwise become effective until the beginning of new terms. It likewise made a limitation on the maximum amount which could be paid any officer during the period from September 1, 1933 through September 30, 1935, irrespective of the amount fixed by law.

Is this limitation such a fixing of salaries, as that the provisions of Section 68, 118, 150 and 281 will attach and as a result continue the limitation beyond October 1, 1935—the statutory salary being otherwise?

I do not think so. The Sparks Amendment does not fix salaries. As I read it, it does not attempt to do so. It does not change salaries or compensation fixed by law. These matters are left as fully to the Legislature as prior thereto, except that the amendment declares that "from and after the first day of the month next succeeding the ratification and adoption of the Amendment" no amount paid "shall exceed the sum of $6,000.00 per annum," This is a limitation on the maximum amount which can be paid for such period and does not fix any salary. It may affect certain officers, but a great number are not affected.

The next succeeding provision is this: "Said limitation of $6,000.00 to be inoperative after October 1, 1935." This language so terms it and clearly recognizes this to be a limitation on the amount to be paid and not a change of any law fixing salaries.

If the limitation is not operative after October 1, 1935, the inquiry at once arises upon what basis shall the officer be paid? It would seem that there is no other place to look than legislative act fixing such salary.

It is therefore my opinion that the salary of the Sheriff and likewise the Probate Judge should after October 1, be that fixed by the last valid legislative act fixing such salaries.

I am assuming of course that the Acts mentioned are the last legislative expressions thereon.

It has been suggested that Sections 68 and 281, have no application to Jefferson County because of the local amendment relating thereto. As to this, I express no opinion, but have preferred to answer the question as if Sections 68 and 281 do apply. If they do not, the conclusion would be the same. Further I do not express any opinion as to the proper and valid act fixing the salary of the Probate Judge as I understand this question is now before the courts. Assuming, however, the validity of the 1933 Act, the foregoing expresses my opinion.

Yours truly,
A. A. CARMICHAEL,
Attorney General.

November 23, 1935.

Hon. W. W. Hill,
Judge of Probate,
Montgomery County,
Montgomery, Alabama.

1. Probate Judges authorized to issue duplicate drivers' licenses where affidavit is made that same were lost or stolen and application for such duplicates are made.

2. No fee allowed to the Judge of Probate for issuing such duplicate.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of November 2, 1935, in which you state:

"Many people have already lost their Drivers' Licenses or had them destroyed. I call your attention to Section 3, Act No. 331, known as the Driver's License Act. Will you please advise me as to whether I should issue a duplicate? If so what should be marked on same so as to relieve me of responsibility. I understand that the applicant is to make an affidavit showing that the original is lost."

I also have a letter from Judge Stewart, Judge of Probate of Coosa County, asking if Judges of Probate are allowed an issuance fee for duplicates.

Replying to these inquiries, I call your attention to that portion of Section 3 of Act No. 331, known as the Driver's License Act, which provides as follows:

"Provided further, that no operator or driver of a motor vehicle shall be subject to a fine by reason of the losing of his driver's license card, provided that he makes affidavit that the same was lost or stolen with-

in a period of twenty (20) days preceding and that his application for a duplicate operator's license card was made within ten days of the discovery of the loss of same."

In my opinion, this is authority for the issuance of a duplicate license. No particular form seems to be provided for, but I assume that such duplicate should show the number of the original and should be marked across the face "duplicate." In other respects it would be the same as the original license and would of course bear the original signature of the officer issuing the license as in the case of the original. Apparently there is not provided any fee for the issuance of this duplicate. Under the well known rule that an officer claiming a fee must point to specific authority giving him such fee, I am constrained to hold that there is no fee provided for the issuance of such duplicate. This conclusion is emphasized by that proviso of Section 8 stating "which said fee shall include **all compensation** to the Probate Judge for performing **all the duties** herein prescribed. (Emphasis ours).

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 23, 1935.

Hon. J. H. Williams,
Superintendent of Banks,
Montgomery, Alabama.

1. The par value of preferred stock of banks may be reduced under the laws of Alabama.

2. The surplus created by reduction in the par value of one class of preferred stock may be used for charge-offs and transfers to a reserve for losses as well as to surplus.

3. Where the amount of surplus made available by the reduction in par value of preferred stock of a bank or by the payment upon the issue thereof of an amount in excess of the stated par value is used to charge off losses to such an extent that the unimpaired capital funds, while greater than the stated par values of all classes of stock are less than the aggregate of the retirement prices and preference in liquidation of the preferred stock and the par value of the common stock, such fact will not be deemed an impairment of the paid up capital stock of the bank within the meaning of Sections 6297 and 6340 of the Code as amended by Acts of 1931, page 825.

4. The dividend rate upon the preferred stock, the retirement price and the preference thereof in liquidation may be stated in dollars per share.

5. A bank in Alabama may agree that the retirement price and the preference of preferred stock in assets of the bank upon liquidation or dissolution shall be an amount which is in excess of the par values of such preferred stock if thereby no impairment of the par values of the capital stock remaining after such retirement is made. Such retirements are subject to the provisions of Section 6372 of the Code.

Opinion by the Attorney General.

Dear Sir:

I have your letter of October 28, 1935, in which you state:

"I have under my supervision a bank to which I will refer as the "X" Bank, which has outstanding shares of Preferred Stock 'A', of Preferred Stock 'B' and of Common Stock, the two classes of Preferred Stock having been issued in conformity with the Act approved April 17, 1933 (General Acts of 1933, p. 146).

"Upon an examination of the 'X' bank I have found that there are losses in excess of the existing surplus and undivided profits which should be charged off, as required by Section 6340 of the Code as amended by the Act approved July 31, 1931 (General Acts of 1931, p. 825).

"In order to provide for such charge-offs, the 'X' bank proposes to reduce the par value of its outstanding Preferred Stock 'A' without reducing the par value of its Preferred Stock 'B' or Common Stock, to restate the rate of dividends upon the Preferred Stock 'A' in dollars per share at an amount which will be equal to the former rate in relation to the former par value, to issue additional Preferred Stock 'A' having the reduced par value to be sold for a price equal to the original par value, and to avail itself of the surplus created by the reduction in the par value of the existing Preferred Stock 'A' and of the surplus to be paid-in upon the issue of new Preferred Stock 'A' for the purpose of making charge-offs or a transfer to a reserve for losses as well as of a transfer to surplus. It is also proposed that the preference of the Preferred Stock 'A' upon the liquidation or dissolution of the bank shall be stated in dollars per share which will be the price paid therefor instead of the par value thereof and that there will be included in the amended charter of the 'X' bank a provision that specified portions of the net profits of the Bank shall be applied towards the retirement of the Preferred Stock 'A' at the issue price thereof, which as stated will be in excess of its reduced par value. After the foregoing action is taken the unimpaired net worth of the 'X' bank will, according to my examination, be at least equal to the stated par values of all classes of its stock but less than the aggregate retirement prices of the outstanding preferred stock and the par value of the Common Stock. The par value of the outstanding Common Stock is not less than the amount required by law for the organization of a new bank in the town where 'X' bank is located (Section 6336 of the Code as amended by the Act approved July 2, 1931, General Acts of 1931, p. 392).

"I call your attention to the facts, that no retirement of stock may be affected without my consent unless the unimpaired capital funds equal an amount which will be equal to or in excess of the stated par values of all classes of stock and that compulsory retirement is to be effected only out of net profits.

"As you are aware the Banking Board of Alabama and I have certain functions to perform in relation to the issue of preferred stock and I also from time to time in the future will be required to supervise the affairs of the 'X' bank and to determine whether or not its capital is impaired under Sections 6297 and 6340 of the Code. Accordingly, I desire your opinion in respect of the following matters:

(a) May the par value of preferred stock of banks be reduced under the laws of this State?

(b) May the surplus created by the proposed reduction in the par value of Preferred Stock 'A' notwithstanding that there is no reduction in the retirement price thereof or in the preference thereof in assets upon liquidation or dissolution, be used for charge-offs and transfers to a reserve for losses as well as to surplus?

(c) If the amount of surplus made available by the reduction in par value of preferred stock of a bank, or by the payment upon the issue thereof of an amount in excess of the stated par value is used to charge off losses to such an extent that the unimpaired capital funds, while greater than the stated par values of all classes of stock are less than the aggregate of the retirement prices and preferences in liquidation of the preferred stock and the par value of the common stock, will the paid-up capital stock of the bank be deemed to be impaired within the meaning of Section 6297 and Section 6340 of the Code as amended?

(d) May the dividend rate upon the preferred stock, the retirement price thereof and the preference thereof in liquidation be stated in dollars per share instead of percentages of par value?

(e) May a bank in Alabama agree that the retirement price and the preference of preferred stock in assets of the bank upon liquidation or dissolution shall be an amount which is in excess of the par values of such preferred stock although not in excess of the price paid therefor upon original issue?

(f) May a bank in Alabama after making the transfers to surplus required by Section 6372 of the Code lawfully obligate itself to retire out of net profits, any class of preferred stock at a retirement price in excess of the par value of such preferred stock if such retirement price does not exceed the price paid for such preferred stock upon its original issue?

"In order that you may be more fully informed as to the provisions which are proposed to be incorporated in the charter of the 'X' bank, I am transmitting to you a copy of the amendments to the charter proposed to be adopted. I will appreciate an early response to this inquiry."

As I understand your letter, the classes of stock of "X" bank now outstanding may be stated in terms of par value in this wise: Class A Preferred $100.00, Class B Preferred $100.00, Common $100.00. Your examination shows an impairment of capital of this bank necessitating that the same be made good as required by law. In order to do this, it is proposed: 1. To reduce the par value of Preferred Stock A from $100.00 per share to $50.00. (These amounts are by way of illustration and are used only in that sense). 2. To issue and sell additional shares of Preferred Stock A of a par value of $50.00 at a surplus, which for purposes of illustration we will say is $50.00, making the amount received $100.00. 3. It is further proposed that on such Preferred Stock A shall be paid dividends at a fixed amount per share rather than at a percentage of its par value. 4. It is further proposed that the preferred stock so issued be retired out of earnings not at its par value, but for the amount at which it was actually sold.

In your letter and in the copy of the proposed amendments to the charter submitted to me, there are detailed provisions for the accomplishment of these purposes but I believe that the foregoing states the questions of law involved. I will take your several questions up in the order in which made.

1. May the par value of preferred stock of banks be reduced under the laws of this State?

As I understand your inquiry, it is not proposed to reduce the par value of the common stock or the par value of the Preferred Stock B. The law regulating the organization, powers and duties of corporations originally was provided by an Act of the Legislature approved October 2, 1903 (General Acts 1903, page 310 et seq.). The main provisions with amendments are incorporated in Chapter 274 of the Code of 1923. The Act of 1903 as originally adopted unquestionably applied to banks inasmuch as there are special provisions therein with reference to banks (Sections 16-22 inclusive). These special provisions do not, however, except in the manner specifically stated, appear to limit the general provisions included in said Act.

By an Act approved March 2, 1911 (General Acts 1911, page 50 et seq.) and by subsequent statutes, parts of which have been incorporated in Chapter 263 of the Code of 1923, special provisions with reference to the organization, powers and regulations of banking corporations have been introduced into our statutory system. Except, however, as limited by the special provisions with reference to banking corporations which have been introduced into the law since the Act of October 2, 1903, I am of the opinion that the statutory provisions applicable to corporations generally are applicable to banks. This appears to be the effect of the case of Ensley Mortgage & Loan Co. v. Chadwick, 223 Ala. 468, 136 So. 682. Section 43 of the Act approved October 2, 1903 authorizes the issue of preferred stock by any corporation organized thereunder. By an Act approved September 26, 1919 (General Acts 1919, page 698, appearing as Sections 7005-7014 of the 1923 Code) the laws with reference to the issue of different classes of stock, including preferred stock, are broadly amplified in respect of any corporation organized under the laws of the State. Among other things, it is provided by Section 7005 as follows:

> "And the power to increase or decrease the stock of the corporation by joint agreement of merger or consolidation **or otherwise** as provided by law, shall apply to all or **any** of the classes of stock."

Section 7005 was held to be constitutional in Randall v. Winona Coal. Co., 206 Ala. 254. While this case applied particularly to the right to issue no-par stock. I think the discussion is of pertinence in the present inquiry.

From aught that appears to the contrary, this statute at the time of its passage applied as well to banking corporations as to other corporations, but the question was put beyond doubt by the passage of the Act approved April 17, 1933 (General Acts 1933, page 146). This Act follows the law applicable to corporations generally in reference to the issue of preferred stock but imposes restrictions in respect of approval and procedure not applicable to corporations generally. Section 1 of this Act provides:

> **"One or more classes of preferred stock in the same manner and by the same procedure as is permitted or required by existing laws of this State with respect to the issuance of preferred stock by corporations organized under the laws of this State."**

While the Act of 1933 above quoted in part, makes no specific mention of decreasing the preferred stock there authorized to be issued, I take it, that the authority to issue such preferred stock in the same manner as general corporations would include the right to increase or decrease one class of stock of a bank if it be clear that a bank can reduce its capital stock.

There were included in the Act approved October 2, 1903 and in the continuing statutes since then with reference to corporations appropriate provisions for the decrease of capital stock and one of the methods by which such decrease may be effected is the reduction in par value of the shares. See Section 7003 of the Code of 1923. Since the adoption of the act approved February 15, 1915 (General Acts 1915, page 88), incorporated as Section 6341 of the Code of 1925 and which is amended by an Act approved August 4, 1931 (General Acts 1931, page 757), there have been special provisions with reference to the decrease in capital stock of banks. These provisions do not specify the mode in which the decrease shall be accomplished. In my judgment, it is contemplated, however, by the Act approved July 31, 1931 (General Acts 1931, page 825) amending Section 6340 of the Code, that one of the methods of reduction shall be a decrease in the par value of outstanding shares. While the Act of 1931, appearing at page 825, could be more specific, it is my judgment that the mandate to "pass a resolution ordering the officers of the bank to charge down the **book value** of the capital stock to approximately its true value" can be reasonably afforded this interpretation. I take it that the lawmakers used "book value" rather than par value as a wider measure of safety and provided in cases of impairment the book value of the capital stock whether greater than, **equal to** or less than par value must be charged down to its real value. While "charged down" may not be the legal equivalent of "decrease" yet this requirement, coupled with the specific authority given to corporations generally by Section 7003 of the Code warrants me, I believe, in concluding that the par value of preferred stock of banks may be reduced under the laws of Alabama. This construction of "charging down" is also supported by the language of section 6, of the Act approved August 4, 1931.

As I read and construe these provisions, there is no limitation upon the classes of stock which may be decreased either in respect of corporations generally or of banking corporations, and preferred stock is expressly authorized to be redeemed and retired. (Code 7005; Acts 1933, page 146). Accordingly, I am of the opinion that a banking corporation may effectuate a decrease in its capital stock by a decrease of its preferred stock and that this decrease may be effected by a decrease in the par value of the outstanding shares of preferred stock. This is subject, of course, to the assumption that the special provisions applicable to the decrease of capital stock of banking corporations are complied with.

My answer to your first inquiry, therefore, is in the affirmative.

In your second question you state: "May the surplus created by the proposed reduction in the par value of Preferred Stock 'A', notwithstanding that there is no reduction in the retirement price thereof or in the preferences thereof in assets upon liquidation or dissolution, be used for charg-offs and transfers to a reserve for losses, as well as to surplus?"

Section 6340 as amended by the Act approved July 31, 1931, in my opinion, contemplates that the surplus created by the reduction in capital stock thereby required to be made in case of impairments, shall be applied in part toward the charge-off of losses sustained by the bank. The opening paragraph of this Act as amended says:

"Whenever losses are sustained by a bank, such losses shall be charged on the books of the bank as losses so that the books of the bank will show the true condition of the bank. When by reason of losses or otherwise the capital of a bank is impaired and when the bank has been notified by the Superintendent of Banks under Section 6297 of the Code to make good its impaired capital, the Board of Directors shall be called together and shall" take the action required by paragraphs (a) and (b), paragraph (a) of which is to charge down the book value of the capital stock to its true value.

This appears to be a direct declaration of purpose and intent. I do not understand that all of the provisions of Section 6340 as so amended are to be followed, but the Act approved July 31, 1931 provides that nothing therein shall be construed to prevent a bank from reducing its capital stock as otherwise provided by law. This appears to have been interpolated with the distinct purpose of permitting other methods of reducing capital stock and not limit the bank only to the method provided by the Act approved July 31, 1931.

Subsection 6 of Section 6341 as amended by the Act approved August 4, 1931 authorizes a reduction in the capital stock of banks in certain situations without the necessity of that reduction being passed upon by the stockholders. The purpose, as set out in this section, is "in order to remove the losses from the bank." It is evident that the primary purpose of both of these Acts was to make good the impairment of losses and giving effect to this manifest purpose, it is my opinion that a surplus created by a reduction in the par value of preferred stock may be either transferred to the surplus fund of the bank or be applied to the charge-offs of losses or to the transfer to a reserve for losses. It is presumed that these are various methods by which the general purposes of making good the impaired capital can be accomplished.

My answer to your second inquiry, therefore, is in the affirmative.

Your third question is as follows:

"If the amount of surplus made available by the reduction in par value of preferred stock of a bank, or by the payment upon the issue thereof of an amount in excess of the stated par value is used to charge off losses to such an extent that the unimpaired capital funds, while greater than the stated par values of all classes of stock are less than the aggregate of the retirement prices and preferences in liquidation of the preferred stock and the par value of the common stock, will the paid-up capital stock of the bank be deemed to be impaired within the meaning of Section 6297 and Section 6340 of the Code as amended?"

The statutory provisions with reference to impairments of paid-up capital stock are found in Section 6297 of the Code and in Section 6340 as amended by the Act of July 31, 1931, (Acts 1931, page 835). Section 6297 refers to an impairment below the amount of "paid-up capital stock." Section 6340 as amended by the 1931 Act refers to an impairment of the "capital of a bank." These two sections applying to the same general subject-matter should, I believe, be read in pari materia, and refer to capital stock rather than the assets of the bank. This is clear as to 6297, and it would appear that a like meaning should be given to Section 6340, as amended, when it uses the word "capital." That the law makers have not given close distinctions to the terms "capital" and "capital stock" is evidenced by Section 6336 of the Code.

Giving this interpretation effect, in view of the fact that specific authority is given for the reduction in capital stock of a bank, I am of the opin-

ion that the terms "paid-up capital stock" and "capital" as used in these statutory provisions have reference only to the stated par value of the outstanding stock and not to the prices at which such capital stock may have been sold. I understand that it is a not uncommon practice for the common stock of a bank upon original incorporation to be paid for at a price in excess of its par value for the purpose of creating a surplus fund, in order to avoid impairment by reason of the excess of expenses over income during the period of early operations of the bank when such result may be reasonably anticipated. It is not my understanding that it is contemplated by the statutes that a bank shall be required to maintain anything unimpaired but its capital stock at par. It is undoubtedly a wiser practice for a bank to maintain a surplus over and above the par value of its stock, and Section 6372 provides therefor, and we are here discussing legal impairments. This practice and construction of the statutory provisions, as applied to common stock, appear to be sound.

It seems to be reasonable that the same practice may be adopted in respect to preferred stock as has been usual in the case of the issue of common stock. It is clear, I think, that our statutory provisions for the maintenence of unimpaired capital funds are for the benefit of creditors to the end that no distribution shall be made to stockholders which would impair the par value of the outstanding stock and thus reduce the protection of creditors. Judge Stone, in Commercial Fire Insurance Co. v. Board of Revenue of Montgomery County, 99 Ala. 1, says:

> "The capital stock of a corporation is a trust fund for the security and benefit of the creditors of the corporation and the managing board fills the relation of trustee for its preservation and administration."

The idea of trusteeship applies with particular force to banking corporations and the statutes, as pointed out, have particularly provided against the impairment of this trust fund. It is clear, I think, that the requirements of Section 6340, as amended by the 1931 Act, are to afford protection to creditors.

The primary question to which your inquiry is addressed is this: Where the actual par value of the paid-up stock is unimpaired, does the charter provision that the preferred stock shall be retired at a premium operate as an impairment of the paid-up capital stock, it not being otherwise impaired?

I think not. The preferences of preferred stock upon liquidation or dissolution and the provisions for the retirement are matters primarily fixing the rights of stockholders among themselves to the assets of a bank after adequate provision is made for its creditors. So long as the rights of creditors are not prejudiced by the retirement of preferred stock, it would appear that the retirement price may be fixed at any amount which the stockholders see fit. It does not appear that the charter provisions of the "X" bank, to which you have called my attention militate against the rights of creditors and, as stated above, the maintenance unimpaired of the stated par values of the several classes of outstanding stock of a bank appears to meet the requirements of the statutory provisions applicable to banks. The Act approved April 17, 1933 and which was adopted subsequent to Section 6297 of the Code and after the 1931 amendment to Section 6340 gives the stockholders of a bank wide latitude in respect of preferences of the preferred stock, rights of redemtpion and retirement and provisions as to security. It is specifically provided by Section 3:

"Any such preferred stock may be authorized and issued in such proportions as between different classes of stock, with such designations, preferences (including preferences as to dividends and assets), voting power or restrictions or qualifications thereof (except as to the creation of bonded indebtedness, the increase of capital stock, and the issuance of preferred stock) and with such rights of redemption, retirement and conversion, and provisions as to security, as shall be provided for in the proceedings to authorize the issuance thereof."

As will be noted, these provisions are stated very broadly and I am unable to accept the view that the difference between the retirement prices or the preferences in liquidation of preferred stock and the stated par values thereof must be deemed paid-up capital stock whatever the original issue price may have been. As I understand it, the bank proposes in effect to issue Preferred Stock B with a par value of $50.00 for which the stockholder proposes to pay the sum of $100.00 and this premium will go into the surplus to the taking care of losses. The capital stock, however, is and remains $50.00 whether the whole of such premium be required for the payment of losses or whether there be an additional amount for surplus. It is proposed, however, by mutual agreement among the stockholders to provide that after the performance of all things required, such as the payment of expenses, the charging off of losses, etc., if the income be sufficient that a retirement fund be set up and that this preferred stock be ultimately retired upon your approval at a premium, which premium shall be the amount paid for it. Taking into consideration the wide authority given the stockholders by the Act approved April 17, 1933, it seems that this proposed method of retirement is authorized by law and the premium at which the stock is proposed to be retired is not in fact capital stock. If this be true, and the par value of the capital stock is not impaired or affected, I do not think that such procedure would constitute an impairment of capital stock, even though the stated par values of all classes of stock be less than the aggregate of the retirement prices of the preferred stock and the par value of the common stock.

I am, therefore, of the opinion that the capital stock of banks in Alabama is not impaired so long as it has unimpaired capital funds equal to the stated par value of its several classes of stock within the meaning of Sections 6297 or 6340 as amended and as hereinbefore construed and that the retirement prices of the preferred stock, even though the retirement out of net profits may be required, does not affect this legal conclusion.

My answer to your third inquiry therefore is in the negative.

In your fourth inquiry you stated:

"May the dividend rate upon the preferred stock, the retirement price thereof and the preference thereof in liquidation be stated in dollars per share instead of percentages of par value?"

The answer to this I think is found in the Act approved April 17, 1933, which specifies that preferred stock may be issued with such designation and preferences as may be stated in the proceedings to authorize such stock. I have been unable to find any statute requiring that the rate of dividends upon preferred stock or that the preferences in liquidation or dissolution of the corporation or the retirement prices of preferred stock must be stated in percentages of par value. I, therefore, conclude that such rate preferences and retirement prices may be stated in dollars per share.

My answer to your fourth inquiry is therefore in the affirmative.

In your fifth inquiry you state:

"May a bank in Alabama agree that the retirement price and the preference of preferred stock in assets of the bank upon liquidation or dissolution shall be an amount which is in excess of the par values of such preferred stock although not in excess of the price paid therefor upon original issue?"

The Act approved April 17, 1933 authorizes the issuance of preferred stock with such rights of redemption, retirement and conversion and provisions as to security as shall be provided for in the proceedings authorizing the issuance. This language apparently is unqualified and is substantially similar to Section 7005 of the Code dealing with corporations generally. It is not an uncommon practice, I understand, for corporations other than banking corporations issuing preferred stock under statutory provisions essentially similar to Section 7005 to include provisions for the redemption and retirement of preferred stock at values in excess of the par value of such stock.

The general conclusions of Randall v. Winona Coal Co., 206 Ala. 254, 89 So. 790, and Stable v. Union Coal Co., 214 Ala. 658, 108 So. 755 impliedly support this procedure by corporations availing themselves of the provision of Section 7005. General corporations may acquire their own stock out of earnings. Except in the case of preferred stock, this is forbidden by Section 6355 of the Code in the case of banks, but it would appear that this Section in relation to preferred stock must be modified by the Act approved April 17, 1933 which specifically authorized the redemption and retirement of preferred stock. This seems to be contemplated by the Act of 1933 and, as I understand the charter provision, a definite retirement fund is proposed to be set up out of net earnings for this purpose. The price at which the preferred stock is to be retired is a matter of primary concern to the stockholders and if such retirement does not cause an impairment in the stated par values of shares of stock outstanding after the same is effected, and the capital so outstanding meets the other requirements of law, there does not appear to be any specific provision prohibiting such action. In your case, the retirement price is equal to the original issue price and though such retirement price is in excess of the par value of the preferred stock, I am of the opinion that the retirement at the issue price may be authorized. This comment is of particular pertinence to the amendments to the charter of "X" bank because such retirement is to be made only out of net profits, and, hence, without your consent, no retirement of preferred stock can be made which will reduce the unimpaired capital funds of the bank below an amount which you state will be equal to or in excess of the stated par values of all classes of stock to be outstanding when such amendments become effective.

My answer to your fifth question is, therefore, in the affirmative.

In your sixth inquiry, you state:

"May a bank in Alabama after making the transfers to surplus required by Section 6372 of the Code lawfully obligate itself to retire out of net profits, any class of preferred stock at a retirement price in excess of the par value of such preferred stock if such retirement price does not exceed the price paid for such preferred stock upon its original issue?"

This is answered in effect by my answer to the fifth inquiry, and, accordingly, the answer to your sixth question is in the affirmative.

I assume that it is contemplated that the requirements of Section 6372 must be met in all cases.

The foregoing conclusions are, of course, predicated upon these assumptions. Under the Act of April 17, 1933, you, with the concurrence of not less than two other members of the Banking Board, or three members of the Banking Board, without action by you, are required to approve the issuance of the preferred stock and the entire corporate proceedings to authorize such issuance and that under Section 6341 of the Code as amended you are authorized to approve any decrease in the capital stock of the "X" bank. The conclusions herein given are, therefore, based upon the assumption that the proposed reduction in par value of Preferred Stock A and proposed amendments to the charter of the "X" bank will, in due course, receive your approval and that of a sufficient number of the Banking Board of this State. I may add that should the corporate proceedings be in proper form, and other requirements of law with which you are familiar be complied with, I see no legal objection to such approvals on any of the propositions submitted and answered herein.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 25, 1935.

Hon. Walter K. McAdory,
Chief, Alabama Highway Patrol,
Montgomery, Alabama.

1. Judges of Probate authorized to issue duplicate drivers' license where affidavit is made that same are lost or stolen and application for such duplicates are made.

2. No fee allowed Judges of Probate for issuing such duplicate.

3. Persons in the service of the Federal Government are exempt from the payment of drivers' license fee only when furnished with a drivers' permit and when operating an official motor vehicle in such service.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of November 18, 1935, enclosing a letter to you from Hon. John T. Frazer, Judge of Probate, Lee County, Opelika, Alabama, requesting that I give you my opinion on the questions propounded therein. Judge Frazer's letter states:

"I am already having reports made by various individuals that they have lost their drivers' licenses and wish to know just what to do about it.

"Section 3 of the Drivers' License Act states: 'Provided further, that no operator or driver of a motor vehicle shall be subject to a fine by reason of the loss of his driver's license card provided that he makes affidavit that the same was lost or stolen within a period of twenty days preceding, and that his application for a duplicate license card was made within ten days of the discovery of the loss of same.'

"This is all that I can find in the Acts relative to the loss of one of these license cards, and I do not know what procedure the Judge of Probate must follow after the loss of such cards have been reported to his office.

"Shall I have the applicant to make application for another license on the same form as originally used for applications, and after he has made such application, shall I issue him another license and charge the regular price for the duplicate; or shall the duplicate be so marked and delivered to the applicant free of any charge?

"I would appreciate instructions as just how to handle duplicate licenses and what to charge for the same.

"Also, is a person in the employ of the Federal Land Bank, who drives an automobile owned by the Bank in the performance of his duties with them, and also for his private pleasure on Sundays and holidays, entitled to the exemption granted to persons in the employ of the Federal Government?

"Section 4, Sub-section 1, of the Act says: 'Every person in the service of the Federal Government when furnished with a driver's permit, and when operating an official vehicle in such service shall be exempt from license under this Act.' We have, in this County, a good number of people working on Federal projects, in the performance of their duties in connection with said projects who seem to think that they are entitled to exemption under this Section.

"Please give me your opinion of this, and also, if possible, advise me what persons in the employ of the Federal Government are furnished with a Federal driver's permit by the Government and what motor vehicles in such service are regarded as official motor vehicles."

The questions propounded by this letter in regard to the issuance of duplicate drivers' licenses were answered by an opinion of this office to Hon. W. W. Hill, Judge of Probate, Montgomery County, in which it was held:

"Probate Judges authorized to issue duplicate drivers' licenses where affidavit is made that same were lost or stolen and application for such duplicates are made.

"No fee allowed to the Judge of Probate for issuing such duplicate."

I herewith enclose copy of this opinion for your information.

Answering your questions as to whether a person in the employment of the Federal Land Bank, who drives an automobile owned by the Bank in the performance of his duties with them and also for his private pleasure on Sundays and holidays, is entitled to the exemption granted to persons in the employ of the Federal Government, I wish to say that employees of the Federal Government are exempt from the drivers' license fee only when they drive an official vehicle in the performanc of their official duties.

Section 4—Sub-section I of the Act levying drivers' license says: "Every person in the service of the Federal Government, when furnished with a driver's permit, and when operating an official vehicle in such service, shall be exempt from license under this Act. The phrase, "when operating an official vehicle in such service," in my opinion very definitely limits the opera-

tion to official business, if the employee wishes to secure the exemption granted to Federal employees. Therefore, it necessarily follows that if a Federal employee used an official motor vehicle of the Federal Government for his own pleasure in addition to using it for official business, he is not entitled to the exemption granted to Federal employees and must pay the appropriate driver's license.

I am unable to advise you what persons in the employment of the Federal Government are furnished with a Federal Driver's Permit by the Government, or what motor vehicles in such service are regarded as official motor vehicles. I suggest that this information be obtained from that Department of the Federal Government by which the person is employed.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 25, 1935.

Hon.. Henry S. Long, President,
State Tax Commission,
Capitol.

1. Act No. 265, H. 118 by Todd providing for a license inspector in all counties of the State having more than 150,000 population held to supersede subsections (i) and (j) of Section 353 of the General Revenue Act of 1935.

2. The fees, penalties and costs now authorized by law to be paid to the license inspector must be paid to the license inspector of such counties by the Probate Judge or Commissioner of Licenses.

3. From such receipts, the License Inspector shall pay his own salary, that of his clerical help and deputy inspectors who are payable on a salary basis and if there is any excess, the same shall be paid two-thirds into the State Treasury and one-third into the County Treasury.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 26th, in which you state:

"We are attaching hereto a copy of House Bill No. 265 by Todd, creating the office of License Inspector of Jefferson County, and a copy of Section 353, House Bill 324, which deals with the office of License Inspector in all counties.

"Please advise us how, considering both these measures, the fees, penalties, etc., collected through the activity of the License Inspector of Jefferson County, are to be paid into the State Treasury, and how the salary and other expenses of the office of License Inspector of Jefferson County are to be paid to the License Inspector.

"We shall appreciate your prompt consideration of this request as the License Inspector of Jefferson County must know how to proceed on and after October 1st."

In reply, I beg to advise that reply to this letter has been held up awaiting determination of the opinion also requested by you as to the payment

of the 15% penalty to License Inspectors generally, which opinion has now been answered.

The Todd Act No. 265, approved August 21, 1935, a copy of which you attach, took effect upon its approval by the Governor. This Act was passed subsequent to the General Revenue Bill of 1935 which was approved July 10, 1935 but which became effective on October 1, 1935. The question of whether the General Revenue Bill, becoming effective subsequent to the effective date of the Todd Act, repealed the Todd Act, presented a question of considerable difficulty. However, I am of the opinion that, the two Acts being passed by the same Legislature, treating of the same subject, the Act last passed, which is the Todd Act, controls as to Jefferson County.

Section 353 of the General Revenue Act provides in part:

> "Section 353. Subsection (i). In counties of over two hundred thousand population, the State Tax Commission shall fix the compensation of License Inspectors and shall at the time of appointment and annually thereafter, fix the compensation and allowance for expenses of the License Inspector for such County. All commissions and fees which would be payable to the License Inspector shall be paid by the Probate Judge or Commissioner of Licenses into the State Treasury."
>
> "Section 353. Subsection (j). The salary of such License Inspector and the expenses of his office shall be paid by warrant of the State Comptroller upon sworn itemized account filed monthly by such License Inspector and approved by the State Tax Commission."

It will be observed that Section 353 provides for the appointment of the License Inspector in counties over 200,000 population by the State Tax Commission and the fixing of the compensation and allowance of expenses. That all commissions and fees payable to the License Inspector are required to be paid into the State Treasury and that the salary and expenses of the License Inspector are payable by the Comptroller upon sworn itemized account filed monthly by the License Inspector and approved by the Tax Commission.

The Todd Act provides that the Governor shall appoint the License Inspector and provides as follows:

> "Section 2. Out of the fees, charges and costs now authorized by law to be collected by the License Inspector such License Inspector shall receive a salary of three hundred dollars per month, and clerical help, and all deputy inspectors serving citations or warrants on delinquent license taxpayers shall hereafter be paid on a salary basis approved by the Governor and not otherwise, and the remainder of the fees, charges and cost collected by such License Inspector shall be paid into the State and County Treasuries, respectively, one-third of the same being paid into the County Treasury and two-thirds of the same being paid into the State Treasury."

It will be seen that the salary of the License Inspector and his deputies are to be paid "out of the fees, charges and costs, now authorized to be collected by the License Inspector." This, I think, is a loose use of the term and refers to the amounts which are payable to the License Inspector under the general law. There is no authority for the License Inspector to collect any fees, charges or costs except such as are paid to him by the Probate Judge or Commissioner of Licenses who is required to collect them from the delinquent taxpayer.

Before any monies could be payable to the License Inspector other than certain citation fees, the opinion rendered to you applying to all License Inspectors and declaring that they were entitled to the 15% penalty in cases of delinquency had to be decided. This was so interlocked with the Todd Act as to make it a condition precedent to a proper construction of the Todd Act.

As the foregoing opinion has been rendered holding License Inspectors are entitled to the 15% penalty in cases of delinquency, and as the effect of the Todd Act is to repeal sub-section (i) and (j) of Section 353 of the 1935 Act, its provisions control. It provides that all fees and penalties which are payable to License Inspectors generally are payable by the Probate Judge, or Commissioner of Licenses to the License Inspector; that out of the funds so received he shall pay himself a salary of $300.00 per month and the salaries of his deputies who are required to be paid on a salary basis approved by the Governor and such additional clerical help as may be necessary, and the remainder shall be paid two-thirds into the State Treasury and one-third into the County Treasury.

Section 3 of the Act requires him to perform such duties as the law now requires license inspectors to perform and "such other and further duties as may be prescribed by the **State Treasury.**" It is difficult to know just what connection the State Treasury has with the duties of the License Inspector. Presumably, the only connection would be in the manner of remitting excess funds and accounting for receipts and salaries paid. Even this is more properly within the purview of the State Comptroller. However, such provision does not affect the general purposes and requirements of the Act or the duties of the License Inspector. It is very clear that his duties are the same as other license inspectors which are set out very fully in Section 353 of the 1935 Revenue Act.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 25, 1935.

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Licenses—

Refund of money erroneously paid for licenses—Inhibition in Section 366, Chapter 1, Article 14, of the Revenue Act of 1935 against making refunds when application is made more than one year from date license is alleged erroneously to have been paid applies to licenses issued prior to October 1, 1935, provided of course, that the date of the application for refund is made subsequent to October 1, 1935, the effective date of the 1935 Revenue Act.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of October 21, 1935, which follows:

"I quote a paragraph of a letter just received which prompts this request:

"'A point of information I would like to clear up in the Boggs petition is this: The Act to which you refer and with which I was familiar with at the time of filing said petition, says nothing as to the disposition of licenses which had been paid prior to the passage of said Act. In that event, the attempt to refuse payment under the new law for licenses payable and paid prior to that time, would make the same retroactive and therefore void as to such payments. I would appreciate any courtesy you might extend to me, in obtaining an opinion from the Attorney General on that matter.'

"Because of this inquiry and since it will doubtless occur in the future, I would like to know whether the inhibition in Section 366, (page 381) of the recent Revenue Bill against a refund of money erroneously paid for a Privilege License when application occurs more than a year from the date such license was issued applies to licenses issued prior to October 1, 1935."

The section under consideration in your letter of inquiry is Section 366, Chapter 1, Article 14 of the Revenue Act of 1935, which reads:

"Section 366. Any person who through a mistake or error on the part of the Judge of Probate has paid to the Judge of Probate money that was not due from him for such license, or by such mistake has paid to the Judge of Probate for such license an amount in excess of that required by law for the business to be carried on by such person under the license such person shall be entitled to have refunded less commission retained by Probate Judge to him the amount in either event so erroneously collected by the Judge of Probate, and the provisions of this Section shall apply only to cases when application for refund is made within one year from date such license is alleged erroneously to have been paid."

It is my opinion that the inhibition contained in Section 366, supra, against making refunds when application is made more than one year from date license is alleged erroneously to have been paid, applies to licenses issued prior to October 1, 1935, provided, of course, that the date of the application for refund is made subsequent to October 1, 1935, the effective date of the 1935 Revenue Act.

Under Sections 3144-46 of the Code of Alabama, 1923, the Legislature granted to taxpayers who pay taxes erroneously or under mistake of fact a right of refund, if they started proceedings to procure said refund within the date of the alleged payment. By Acts 1931, page 811, the Legislature amended this Section to change the six year limitation to one year. The Supreme Court of Alabama, in the case of First National Bank of Scottsboro v. Jackson County, 150 So. 690, construed Sections 3144-46 of the Code of Alabama, supra, as amended by the Act of 1931, supra. The proceeding there was brought after amendatory act, supra, was passed and went into effect, and more than one year after the alleged payment, but less than six years thereafter. The Court there said:

"Plaintiff's last payment was made January 20, 1931. The present action was commenced on October 11, 1932. As originally enacted, the statute permitted a recovery within six years from the date of payment. Section 3146, Code 1923. But by the Act approved July 28, 1931 (General Acts 1931, p. 811), this section was rewritten with the single change of a

substitution of one year in the place of six for the commencement of the suit, and it appears the present suit was brought more than one year after the approval of the amendatory act. This section and the two preceding constituted one act (General Acts 1907, p. 639), and were codified therefrom.

"A county is a mere political subdivision of the state, and no right to a suit against it exists except by statute. Ex parte State, 52 Ala. 231, 23 Am. Rep. 567; Hamilton v. Jefferson County, 209 Ala. 517, 96 So. 628. Prior to the enactment of what is now section 181 of the Code 1923, the county was not subject to suit, and since that time and prior to the enactment here in question, any such suit was subject to the limitations of the present Code, section 228. Lowndes County v. Hunter, 49 Ala. 507.

"By the Act of 1907 (sections 3144-3146, Code 1923), therefore, the Legislature granted to taxpayers, who paid their taxes under an invalid law, a new privilege or benefit, for prior thereto no action would lie for taxes voluntarily paid. Raisler v. Mayor, etc., of Athens, 66 Ala. 194; Gachet v. McCall, 50 Ala. 307.

"As said in Luke v. Calhoun County, 56 Ala. 415; 'The legislature has full power to take away by statute rights, not vested, which have been conferred by statute.' See, also Blake v. State, 178 Ala. 407, 59 So. 623. And speaking of the repeal of a statute conferring a right to sue the State, the court, in Exparte State of Alabama, 52 Ala. 231, 23 Am. Rep. 567, said: 'Such statutes are matters of grace, confer privileges,—they do not create rights. * * * The power to withdraw is commensurate with the power to confer, and when the privilege is withdrawn, the citizen is remitted to the condition in which he stood when it was conferred.'

" 'When a right given by statute is not by nature a vested right and at the time of the repeal of the statute is still inchoate * * * it will fall with the statute, unless expressly excepted.' 59 Corpus Juris 1188.

"Illustrative of this general rule is the case of Ex parte State of Alabama, 52 Ala. 231, 23 Am. Rep. 567, where it was held that the repeal of the law authorizing suits against the state strips a court, in which such a suit is pending, of all jurisdiction to proceed further in the cause, and wherein was quoted with approval the following expression from Beers v. State of Arkansas, 20 How. 529, 15 L. ed. 991: 'This permission (to sue the State) is altogether voluntary on the part of the sovereignty; it follows that it may prescribe the terms and conditions on which it consents to be sued, and the manner in which the suit shall be conducted, and may withdraw its consent whenever it may suppose that justice to the public requires it.'

"So in the instant case the Legislature has granted to the taxpayer a new privilege to sue the county under such conditions and restrictions, among them, as originally enacted, a requirement that the suit be brought within six years. But the amendment in the Act of 1931 changes this period to one year, and we think the amended act is here to be construed as if the statute had been originally enacted in this amended form. 59 Corpus Juris 1096.

"There is here no element of contract involved, for, as said in Alabama v. United States, 282 U. S. 502, 51 S. Ct. 225, 226, 75 L. Ed. 492: 'Levying a tax does not create a contract. It is a unilateral act of superior

power, not depending for its effect upon concurrence of the party taxed.' Differently expressed is the same thought in State v. Fleming, 112 Ala. 179, 20 So. 846, 847, cited approvingly in Turner v. State, 226 Ala. 269, 146 So. 601: 'In one sense, there is no element of contract in taxation, in that the taxing power imposes the tax and enforces its collection whether the party taxed assents or dissents.' True, in a proper case, recovery may be had in an action for money had and received (Ward v. First Nat. Bank(supra), or in a civil action as for a debt (Turner v. State, supra). But this relates to a matter of remedy only and affords no foundation for the insistence that plaintiff here has been deprived of any vested right or that the application of the amended act to its case in any manner impairs the obligation of a contract."

Following the reasoning of the Court in the Jackson County case, supra, we must conclude that where an application for refund of license erroneously paid is made after October 1, 1935, the effective date of the 1935 Revenue Act, it must be made within one year from the date such license is alleged erroneously to have been paid, as provided by Section 366, supra.

Of course, Section 366, supra, also applies to all licenses issued subsequent to October 1, 1935.

Very truly yours,
A. A. CARMICHAEL,
Attorney General.

November 26, 1935.

Hon. I. H. Hobson,
Clerk of the Circuit Court,
Tuscaloosa, Alabama.

Under Local Act of 1931, page 135, the Fine and Forfeiture Fund of Tuscaloosa County is abolished and all claims against this fund are paid out of the General Fund of the County.

The Clerk is allowed to collect out of this fund claims that would otherwise go against the Fine and Forfeiture Fund of the County, not exceeding the amount of $1500.00 in any one year. Therefore, the Clerk in making up his claims against the Fine and Forfeiture Fund (General Fund of Tuscaloosa County) may include any cases finally disposed of that are not barred by the statute of limitations of twelve months under Section 228, Code of Alabama, 1923.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of September 13, 1935 also your explanatory letter of September 20, 1935, in which you request my opinion as follows:

"My first term as Clerk of the Circuit Court of Tuscaloosa County ended January 14th 1935. I take it that I cannot collect from what is known as the Fine and Forfeiture Fund—General Fund in this County —in cases that final orders were made in prior to January 14th, 1935, as there is a limit of the amount the Clerk can receive from this source each year. Please answer for me the following questions:

"Can the Clerk collect from the Fine and Forfeiture Fund—General Fund in this County—during the year 1935 and after January 14th any amount in cases disposed of during 1934 in cases where the indictment was withdrawn and filed, the defendant was not convicted etc. and apply it on the amount he is allowed to receive from this fund in 1935?

"In cases which were docketed prior to January 14th, 1935, but were disposed of after that date can the Clerk of the Circuit Court properly collect from the General Fund (Fines and Forfeitures) all the costs that he could collect were the cases docketed after January 14, 1935 or should he collect only for services rendered during the term of office that begun January 14th, 1935?

"In cases where there is a conviction in felony cases and the defendant is sentenced to serve a term in the penitentiary after the State has paid the costs it has to pay in the case and the Clerk has issued an execution against the defendant for the costs in the case and the same has been returned by the Sheriff endorsed by the Sheriff 'No property found' is the Clerk entitled to receive from the County (Fine and Forfeiture fund) General Fund in this County, the difference between the amount of costs due him in the case and the amount paid by the State? Please answer the same question as it would apply to misdemeanor cases."

In answer to your request, I find it best to answer each of your questions as a whole.

I call your attention to the Local Act approved June 19, 1935 which is as follows:

"That there shall be paid by the custodian or depository of the funds of Tuscaloosa County, Alabama, out of any money in the general fund or treasury of said County not otherwise appropriated, all claims which according to law would accrue against the fine and forfeiture fund of said County if said fine and forfeiture fund had not been abolished, upon the presentation and surrender to the Board of Revenue of said County of a certificate therefor issued and proven as now provided by law; provided, however, that the claims of the Circuit Clerk for services rendered in the Circuit Court of Tuscaloosa County and for services rendered as ex officio Clerk of the Inferior Court of Tuscaloosa County, which claims would have been paid out of the fine and forfeiture fund if the same had not been abolished, shall not exceed Fifteen Hundred Dollars, ($1500.00) in any one year; and provided further that the claims of the Sheriff of said County, which would have been claims against the fine and forfeiture fund if the same had not been abolished, shall not exceed Two Thousand ($2000.00) Dollars in any one year; and the claims of said Circuit Clerk and the said Sheriff shall be paid only upon the presentation of a sworn, itemized statement of such claims to the Board of Revenue of said County and upon the order of the said Board of Revenue.

I think from reading the above Act that it makes no difference as to when claims against the Fine and Forfeiture Fund of your County (General Fund of Tuscaloosa County) accrued. The limitation is not on when the claims accrued but is on the amount paid. You will note it says "shall not exceed $1500.00 in any one year." I think the Clerk may select just what cases he will present against this fund and have them paid so long as he

does not exceed the amount fixed for any one year, viz: $1500.00. Having said what I have above, it eliminates your question about when a claim does actually accrue, whether on the institution of the prosecution or the date of disposal, but incidentally I might say, for your information that costs accrue or are payable on the final disposition of the case. Before this time, there is no way to ascertain where these costs will go; whether against the State or the defendant.

In all felony cases the defendant is never sentenced to the penitentiary for the costs, therefore execution my issue against him for the same if there be a judgment for said costs. See Section 3735, Code of Alabama, 1923, and on the return of execution "no property found", such costs other than those items paid by the State under Section 3667 of the Code of 1923 may become a charge against the fine and forfeiture fund of the County. Biennial Report of the Attorney General 1920-22, p. 429.

The rule however is different where a defendant is convicted of a misdemeanor and sentenced to hard labor to pay the fine and costs. In this instance, the defendant is sentenced for costs (contrary to sentence in felony cases). This office has held that where a defendant has been sentenced to hard labor to pay fine and costs and has actually worked out such sentence, in cases where sentence is sufficient to pay all the costs or where the Governor has pardoned the defendant and remitted the costs under the Act of 1935, no execution can issue. Therefore, no return can be made "no property found". Therefore, such costs cannot become a claim against the fine and forfeiture fund of the county. Biennial Report of Attorney General 1932-34, p. 436. I might suggest that as these claims now under your local law, supra, have to be passed by the Court of County Commissioners, they will have to be presented within a year from their accrual or they will be barred by the statute of limitations of twelve months under Section 228, Code of Alabama, 1923.

Jacob Michael, Jr. v. Marengo County, 52 Ala. 159.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 26, 1935.

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Taxation. Board of Review.

(1) Board of Review without authority to reopen assessment, subsequent to regular meeting on first Monday in June, which hearing cannot extend beyond second Monday in July.

(2) Board of Review in cases where valuation was increased over previous year, and notice thereof was not served on taxpayer cannot reopen such assessment after the "taxes become delinquent."

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"Will you please advise me as soon as possible on the following questions:

"1. Has the County Board of Review the authority to raise or lower the Assessed valuation of a taxpayer's property after such taxes become due on October 1st?

"For example: 'A's property is assessed as of October 1, 1935, for taxes due October 1, 1934, at the same valuation as the preceding year. 'A' does not file a written objection to the assessment with the Board prior to their regular meeting for hearing objections, on the first Monday in June. At various dates in December 1934 and January and February 1935 the Board notifies the Tax Collector that 'A's assessment for the preceding year has been reduced $..... , by resolution passed by the Board, advising the collector to reduce A's taxes accordingly and to take an error for the difference.

2. Does the law require that a taxpayer be notified as to the assessed valuation set on his property, in the event such valuation has not been changed from the valuation of the preceding year."

In reply, I call to your attention two opinions appearing in the Biennial Report of 1930-32 at pages 270 and 275 which discuss the general question presented by you fully. The latter opinion, while not directly addressed to your inquiries, largely answers them.

My answer to your first question based on the facts given by you is in the negative.

In Daffin v. Scotch Lumber Co., 236 Ala. p. 33, at page 36, in a case where protest was made **before the taxes actually became delinquent** but **subsequent** to the **last Monday in May,** the Supreme Court said:

"The jurisdiction and power conferred by said section 57 is judicial, and is limited to 'hearing objections filed in writing to any assessments or valuations fixed as provided' in the act, and it is familiar law, that 'Conditions precedent to a statutory review by an officer or board must, of course, be complied with. Whatever may be the relief sought, the party applying for it must comply strictly with the provisions of the statute which confers the right.' 3 Cooley on Taxation, 1206; Birmingham Building & Loan Association v. State, 120 Ala. 403, 25 So. 52.

"The petition for the writ of mandamus clearly shows that the objection to the assessment was not filed on or before the last Monday in May, and, unless the statute contains an exception to this limitation on the taxpayer's right of review, and the petitioner's case falls within the exception, the proceedings of the board were coram non judice and void."

In your case no protest was filed, and therefore the Board had no right to reopen and change the assessment.

The court later in the same case made this comment:

"Under the provisions of the last-cited sections (sections 36, 55), if the value of the property listed by the taxpayer is increased by the tax assessor over the assessed value for the previous year, or if new items of property are added to the assessment by the tax assessor or the board of review, the taxpayer is entitled to notice of such increase or new item, and

if such notice is not given, the taxpayer is given the right, on proper application to the board of review at any time before the taxes become delinquent, to have the assessment reopened and to a hearing, and, if the valuation is excessive or the added items are not assessable to him, to have the assessment corrected, and to this end section 62 of the act gives the board full power and jurisdiction. Acts 1923, pp. 183, 184, Section 62, Revenue Code 1929, Section 192."

It is to be noted that the notice is to be given **"if the value for the previous year** is increased by the tax assessor over the value for the preceding year. There is a similar provision in cases where the Board of Review takes similar action.

This contemplates special notice in my opinion only in cases where such value is increased. However, the general notice provided by Section 36 of the Revenue Act of 1923. (Sec. 186, 1920 Revenue Comp.) would operate as sufficient notice in all cases properly before the Board of Review except in cases where the valuation of the previous year has been increased, when the special notice provided by Section 157 (1929 Comp.) is required.

In your case you state the valuation was not increased over that of the preceding year. Therefore the general notice provided by Section 186 was all that was required.

While Section 157 contains this proviso:

"Provided, however, that the taxpayer shall have the right any time before the taxes become delinquent to appear before the Board of Review and have the assessment of his property re-opened, if satisfactory proof is made that the taxpayer or his agent did not receive notice of such increase."

its applicability is necessarily limited to those cases where special notice is required, which is not the case under the facts submitted by you.

Moreover this right to reopen in any case is limited to the time the taxes **"become delinquent."** There would therefore be no authority in any case to reopen the assessment after December 31, when the taxes become delinquent.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 27, 1935.

Hon. J. B. Hilliard,
Clerk of the Circuit Court,
Troy, Pike County, Alabama.

1. Where defendants have been convicted and sentenced either to hard labor or the penitentiary or fined, the judges of the various courts are without power or jurisdiction to suspend such sentences under the authority of Montgomery vs. State, appeal from Lauderdale County (now in manuscript.)

2. The Governor under an Act approved February 1, 1935, H. B. 91, by Hendley, has the power to pardon or parole defendants after conviction, and may also remit cost and when so remitted by the Governor, there

is no way to collect same out of the State or Fine and Forfeiture fund of the County.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 22, 1935, in which you request my opinion as follows:

"Please advise me just how to charge the costs and collect same in cases in which the defendant was tried, convicted and then sentenced and the sentence suspended pending good behavior or for a specific time, in the Court's discretion.

"Also in cases where the defendant is sentenced to hard labor for the County and the Governor paroles such convict under No. 25....., H.91..... Hendley, approved February 1st, 1935, without such convict paying the cost, should such cost as accrues in those cases be charged to the Fine and Forfeiture Fund, or just where should an officer collect his cost in such cases."

The main question involved in your request has been pending in the Court of Appeals and the Supreme Court of Alabama for several months, either on direct appeal or on motion for rehearing and has just recently been finally decided, which was adversely to the defendant. The case referred to above is Montgomery vs. State, appealed from Lauderdale County (now in manuscript). In this case Judge Knight rendering the opinion of the Court held the Act approved September 28, 1932, (General Acts, 1932, page 45) unconstitutional, therefore void.

I presume, that in each case where an attempt was made to suspend the sentence and grant probation, there was a judgment for cost. This office has repeatedly held that even though the law was constitutional the judges of the various Courts of Alabama were without power or jurisdiction to suspend the sentence for cost. **Biennial Report of the Attorney General, 1932-1934, page 265.** This being true, I see no reason why execution cannot now issue in such cases and if returned "no property found" this cost would become a charge against the fine and forfeiture fund of the County, under Section 4039, Code of Alabama, 1923, as amended by an Act approved February 18, 1927, which reads in part as follows:

". . . or in which defendants have been convicted, and have been proved insolvent by the return of executions 'no property found.' "

Your second request, I see no way the cost in cases of this character can be made a charge against the fine and forfeiture fund of the county as under an Act approved February 1, 1935, the Governor is given full power to grant pardon after conviction and may extend this to the remitting of cost, should he see fit. The matter of cost is left to the sound discretion of the Governor and if he sees fit to remit the same this, in my judgment is final and I know of no way to collect this cost. The Act approved referred to is as follows:

AN ACT

"To authorize the Governor to grant paroles or pardons in misdemeanor cases with or without payment of court costs in the case; and

with or without application being made therefor by the person convicted; and with or without advertisement of intention to apply therefor being given; and to provide that if paroles or pardons are granted to persons now on temporary parole, the State shall not furnish them the clothing nor pay them the money provided by Sections 3650 and 3651 of the Code.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

"Section 1. The Governor may, after conviction, and not otherwise, grant a pardon or parole to any person convicted of a misdemeanor. The Governor, in his discretion, may grant the pardon or parole with or without the payment of the court costs in the case and either with or without a formal application being made therefor; and either with or without notice of intention to apply for pardon or parole being given as is now provided by law.

"Section II. In all misdemeanor cases where parole has heretofore been granted conditioned upon the payment of court costs, or where temporary parole has been granted, the Governor may, in his discretion, give a pardon or permanent parole either with or without the payment of the court costs. Where parole or pardon is granted to a person who has heretofore been granted a parole conditioned upon payment of court costs or a temporary parole and is not in the penitentiary no clothes shall be furnished him nor money paid to him, as provided by Sections 3650 and 3651 of the Code of Alabama of 1923.

"Section III. All laws or parts of laws in conflict with the provisions of this Act are hereby repealed.

"Section IV. This act shall become effective immediately upon its passage and approval by the Governor.

"Approved February 1, 1935."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 27, 1935.

Hon. Roy Sanderson,
Judge of Probate, Marion County,
Hamilton, Alabama.

Judges of Probate—must make record of all motions voted on by the Court of County Commissioners.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of November 1, 1935, which is as follows:

"Yesterday in Commissioner's Court Commissioner A made a motion, which was voted on by the Court. The motion lost and later Commissioner B made a motion to exclude the motion from the minutes of the Court. Commissioner A contends that his motion should become a part of the minutes because it was voted on and was a transaction of the court. It has been the custom in this county to record all motions whether voted on or not. I place all motions before the court.

"The question I want to know is whether all motions that are voted on become part of the minutes if the commissioner contends for it."

I call your attention to Section 6763 of the Code of Alabama, 1923, which reads as follows: "The Judge of Probate must record the proceedings of the court, make all necessary orders, and issue all process necessary to sustain its jurisdiction or maintain its authority."

The duties of the Probate Judge imposed by this section were held mandatory by the Supreme Court of Alabama in the case of Fountain, Judge of Probate, et al. v. State ex rel Hybart, 211 Ala. 586. A motion voted on by the Court of County Commissioners is part of the proceedings of the Court and therefore it is my opinion that the Judge of Probate must record all motions voted on by the courts, as part of the record of the proceedings of the court.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 27, 1935.

Hon. J. B. Hilliard,
Clerk of the Circuit Court of Pike County,
Troy, Alabama.

(1) (2) The Governor, under authority of an Act approved February 1, 1935, has power to remit fines and forfeitures and to remit hard labor sentences and all the costs incident to the prosecution if he so sees fit.

(3) If the Governor remits the fine and costs or hard labor, where defendant is sentenced for fine or costs to hard labor in a misdemeanor case, there is no provision of law for collecting this cost. However, if the Governor only remits the fine or forfeiture and does not remit the costs, the costs may be collected by execution against the defendant, or if the execution is returned "No property found," then it becomes a claim against the Fine and Forfeiture Fund of the County.

(4) The Convict Department refuses to pay costs in cases which have been remitted under the Act approved February 1, 1935, for the reason, when the Governor remits the costs, this is final and no costs that have accumulated can be collected.

(5) When a defendant has been sentenced to hard labor for the county to pay the fine or as additional punishment in misdemeanor cases, is bound to deliver such convicts to the Transfer Agent of said Department.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of July 6, 1935, in which you request my opinion as follows:

"1. Under what authority of law can the Governor parole a defendant sentenced to hard labor, from jail?

"2. Under what authority of law can the Governor relieve a defendant, sentenced to hard labor, from paying costs?

"3. If there is a law giving the Governor authority to relieve the defendant from paying the costs where a fine is assessed, how are the officers and witnesses to get their fees?

"4. Under what authority of law does the Convict Department refuse to pay the costs in such cases?

"5. Is the defendant legally in the penitentiary from the day sentence is passed and does the Sheriff act as an agent of the Convict Department in holding such defendant in jail to be delivered to the Transfer Agent of the Convict Department?

Answering your first inquiry, I call your attention to Section 134 of the Constitution of Alabama, 1901, which is in part as follows:

"The Governor shall have power to remit fines and forfeitures, under such rules and regulations as may be prescribed by law; and, after conviction, to grant reprieves, paroles, commutations of sentence, and pardons, except in cases of impeachment. * * *"

I also call your attention to Section 5127, Code of Alabama 1923, which is as follows:

"In all cases, except treason and impeachment, the governor has power, after conviction, and not otherwise, to grant reprieves, commutations, paroles and pardons, and to remit fines and forfeitures and he must cause to be entered, in a book kept for that purpose, his reasons therefor, and must preserve on file all documents on which he acted; and it is the duty of the secretary of state to attest the reprieve, commutation or pardon, when granted."

The power of pardon, parole or commutation of sentence, setting aside fines and forfeitures, is vested in the Governor of the State, and none other, as shown by the above quoted sections of the Constitution and statutes.

Answering your second inquiry, I call your attention to an Act approved February 1, 1935, which is as follows:

"AN ACT"

"To authorize the Governor to grant paroles in misdemeanor cases with or without payment of court costs in the case; and with or without application being made therefor by the person convicted; and with or without advertisement of intention to apply therefor being given; and to provide that if paroles or pardons are granted to persons now on temporary parole, the State shall not furnish them the clothing nor pay them the money provided by Sections 3650 and 3651 of the Code.

"BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

"Section 1. The Governor may, after conviction, and not otherwise, grant a pardon or parole to any person convicted of a misdemeanor. The Governor, in his discretion, may grant the pardon or parole with or without the payment of the court costs in the case and either with or without a formal application being made therefor; and whether with or without notice of intention to apply for pardon or parole being given as is now provided by law.

"Section II. In all misdemeanor cases where parole has heretofore been granted conditioned upon the payment of court costs, or where temporary parole has been granted, the Governor may, in his discretion, give a pardon or permanent parole either with or without the payment of the court costs. Where parole or pardon is granted to a person who has heretofore been granted a parole conditioned upon payment of court costs or a temporary parole and is not in the penitentiary no clothes shall be furnished him nor money paid to him, as provided by Sections 3650 and 3651 of the Code of Alabama of 1923.

"Section III. All laws or parts of laws in conflict with the provisions of this act are hereby repealed.

"Section IV. This Act shall become effective immediately upon its passage and approval by the Governor.

"Approved February 1, 1935."

Prior to the passage of the above Act, the Governor was without power to remit costs. He could only set aside fines and forfeitures and sentences for hard labor in misdemeanor cases, but, in the above Act his power is raised and he is now given authority to include in his executive order of remittal of fines, all the costs in the case. He can, if he sees fit, grant the remittal of fines and forfeitures without remitting the costs. This is a matter left to his discretion.

Answering your third inquiry, I know of no way such costs can be paid, as it does not come under the provisions of Section 4039, Code of Alabama, 1923, as amended by the Act approved February 18, 1927, (General Acts 1927, p. 45); therefore, it cannot be paid out of the Fine and Forfeiture Fund of the County; that is where the Governor remits the fine and costs. Of course, when the Governor only remits the fine and lets the judgement for costs stand, then execution can issue against the defendant for the costs and if the same is returned, "no property found," then the costs become a charge against the Fine and Forfeiture Fund of the County under Section 4039 of the Code, supra, by virtue of the following paragraph in said Section:

"* * * the County Treasurer of such County must pay the fees of the officers of the Court arising from criminal cases in which the defendant is not convicted and the costs are not imposed on the prosecutor, **or in which defendants have been convicted, and have been proved insolvent by the return of executions 'no property found.'** "

In answer to your fourth inquiry, the Convict Department refuses to pay this cost for the reason the Governor has remitted the same and there is no cost under the Act supra.

Answering your fifth inquiry, it is my opinion when sentence is passed upon a defendant, sentencing him to hard labor for a misdemeanor, that his service begins the date on which he was sentenced, and he is being held by the Sheriff to be delivered to the Transfer Agent of the Convict Department on demand.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 29, 1935.

Hon. William F. Black,
Director, Transportation Bureau,
Alabama Public Service Commission,
Montgomery, Alabama.

Parties contracting with the Works Progress Administration, a branch of the Federal Government, for hauling are not exempt from the operation of the Alabama Motor Carrier Acts.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of October 22, 1935, in which you state:

"We have been approached on several occasions by parties desiring to bid on projects of the Works Progress Administration for the transportation to and from the project of freight. Most of these parties were interested in bidding on the work of transporting dirt from place to place for the Works Progress Administration.

"Our understanding is that the operations involved are covered by contracts with the Works Progress Administration.

"Assuming that the motor-carrier operation involved in one of these contracts is not exempt from the Alabama Motor Carrier Act of 1931 or the Act approved October 28, 1932 (H. B. 113) by the terms of either of these statutes, are they exempt by reason of the fact that the work is carried on under a contract with the Works Progress Administration, a branch of the Federal Government?"

It is my opinion that your question should be answered in the negative. You are not attempting to license or regulate an agency of the Federal Government, but only a private individual who is working or who hopes to secure a contract with a Government Agency.

"Property owned and used by a private corporation, for private business advantage in the exercise of a privilege or franchise granted by the United States may be subject to state taxation."—61 Corpus Juris, p. 370.

Groomer v. Standard Dredging Co., 32 S. Ct. 499, 224 U. S. 362, 56 L. Ed. 801.

See also opinion of Attorney General rendered on July 23, to Deputy Treasurer, Bessemer Division, Jefferson County, Bessemer, Alabama.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 29, 1935.

Hon. J. R. White, Chairman,
Walker County Board of Revenue,
Jasper, Alabama.

Statutes—

1. Local Acts, 1932—Act No. 82, page 28, held valid.

(a) Where amendatory Act is complete in itself with title indicating subject, Act is valid enactment though, to make subject-matter clear, it refers to act which may be unconstitutional.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of September 23, 1935, in which you request my opinion as follows:

1. Is Act No. 262, page 120, Local Acts 1931, unconstitutional and void?

2. If Act No. 262, page 120, Local Acts 1931, is unconstitutional and void, then is Act No. 82, page 28, Local Acts, 1932, likewise unconstitutional and void?

Since it is my opinion that the answer to your second question, which is really the controlling question in the matter which confronts us, does not depend on the answer to your first question, I will not attempt to answer your first question, as to whether or not Act No. 262, page 120, Local Acts 1931, is unconstitutional and void.

Considering your second question, I wish to say that it is my opinion that Act No. 82, page 28, Local Acts 1932 is a valid enactment. (This conclusion is based on the assumption that this Act was passed in the manner provided by the Constitution of 1901 for the passage of Local Acts. You do not indicate in your letter that it was not passed in such a manner.) Act No. 82, supra, is an Act which purports to amend Act No. 262, supra, but an examination of Act No. 82, supra, shows that it referred to Act No. 262, supra, only for the purpose of identification and, when so identified, it is complete in itself, and is not dependent on Act No. 262, supra, for any other purpose. Therefore, if we grant, for the sake of argument, that Act No. 262, supra, is unconstitutional and void, it's unconstitutionality would not invalidate Act No. 82, supra, since it refers to Act No. 262, supra, only for the purpose of identification and, when so identified, it is complete in itself. The Supreme Court of Alabama, in the recent case of Harris v. State, ex rel., Williams et al., reported in 151 So. 858, which dealt with a similar case to the one presented by your inquiry, said:

> "If such latter Act is complete in itself as fully evidencing the whole of the legislation there intended to be covered, with a title which indicates its subject, it is a valid enactment for its own purpose, though in order to make its subject-matter clear, it may refer to an Act which has been repealed or is unconstitutional in whole or in part. It does not purport to revive the dead Act, but creates a new one, complete and definite, in full compliance with the requirements of the Constitution."

Therefore, it is my opinion, that Act No. 82, page 28, Local Acts 1932, is a valid enactment, and controls the subject there dealt with in all respects unless it has since been amended or repealed.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 29, 1935.

Hon. L. W. Price,
Judge of Probate, Conecuh County,
Evergreen, Alabama.

Poll tax—Persons who pay 1934 poll tax subsequent to February 1, 1935, are not entitled to vote in any election held between February 1, 1935 and February 1, 1936.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of November 3, 1935, which is as follows:

"An election will be held in one of the Board of Revenue districts of Conecuh County, on December 17th, to fill a vacancy on said Board.

"A number of persons in the County were, in 1934, qualified electors, having paid all poll taxes due up to and including 1933, but have failed to pay their 1934 poll tax. Will you please advise me as follows:

"May persons who were heretofore qualified electors, but who failed to pay their 1934 poll tax, qualify themselves to vote in an election to be held on December 17, 1935, by paying their 1934 and 1935 poll taxes between October 1, 1935 and December 17, 1935?"

It is my opinion that persons who pay their 1934 poll tax subsequent to February 1, 1935, are not entitled to vote in any election held between February 1, 1935 and February 1, 1936.

Section 361 of the Code of Alabama, 1923, reads:

"Every citizen of this state who is a citizen of the United States, and every resident of foreign birth, who, before the ratification of the present Constitution of the State, shall have legally declared his or her intention to become a citizen of the United States, twenty-one years old or upwards, not laboring under any of the disabilities named in Section 364 (293) of this Code, and who shall have resided in this State at least two years, in the county one year, and in the precinct or ward three months, immediately preceding the election at which he offers to vote, and who shall have been duly registered as an elector, and shall have paid, on or before the 1st day of February next preceding the date of the election at which he or she offers to vote, all poll taxes due from them for the year 1901, and for each subsequent year, shall be an elector, and shall be entitled to vote at any election by the people."

See opinions of the Attorney General, Biennial Report 1928-1930 at pages 14 and 933, and opinion of the Attorney General to Hon. J. Lee Smith, Judge of Probate, Chilton County, under date of June 3, 1935.

It is my opinion that the persons described in your letter cannot qualify to vote in an election to be held December 17, 1935, by paying their 1934 and 1935 poll taxes between October 1, 1935 and December 17, 1935.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 29, 1935.

Hon. Chas. W. Lee,
State Comptroller,
The Capitol.

Construing the method of payment by the State of costs in criminal cases under Section 3667, Code of Alabama, 1923.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of September 6, 1935, in which you request my opinion as follows:

"'A' makes complaint before a Justice of the Peace that 'B' and 'C' have committed the offense of ..... The Justice of the Peace issued a warrant of arrest for 'B' and a warrant of arrest for 'C'. The Sheriff executes the two warrants of arrest and 'B' and 'C' are released under bond after preliminary hearing. When the Grand Jury meets 'B' and 'C' are jointly indicted, the Circuit Judge orders 'B' and 'C' rearrested as their bonds are insufficient. The Circuit Clerk issues a capias for 'B' and a capias for 'C' and the Sheriff executes same by placing 'B' and 'C' in jail or releasing under new bonds. When the case is called for trial, 'B' and 'C' announce ready and they are tried jointly. 'B' and 'C' are found guilty as charged and are sentenced to the Penitentiary.

"Taking into consideration the above statement of facts will you please advise me as follows:

"1. Would 25c for complaint be a proper item of costs, payable out of the Convict Fund under Section 3667, Code of 1923, as part of Justice's and Constable's fees on preliminary trial?

"2. In the event 'A' made complaint on one day against 'B' and complaint on the next day against 'C', would a fee of 50c for two complaints be a proper item of costs, payable out of the Convict Fund under Section 3667, Code of 1923, as part of Justice's and Constable's fees on preliminary trial?

"3. One complaint having been made against 'B' and 'C' jointly, would the Justice of the Peace issue a warrant of arrest for 'B' and a warrant of arrest for 'C' or would he issue one warrant of arrest naming both 'B' and 'C' in such warrant?

"4. If the Justice of the Peace should issue a warrant of arrest for 'B' and a warrant of arrest for 'C', would a fee of $1.00 for two warrants be a proper item of costs, payable out of the Convict Fund under Section 3667, Code of 1923, as part of Justice's and Constable's fees on preliminary trial, such fee being 50c for each warrant?

"5. After indictment and on order of the Circuit Judge they are to be rearrested, would the Circuit Clerk issue a capias for 'B' and a capias for 'C' or would he issue one capias naming both 'B' and 'C' in such capias?

"6. If the Clerk should issue a capias for 'B' and a capias for 'C', would a fee of $1.00 for the issue of two capiases be a proper item of costs, payable out of the Convict Fund under Section 3667, Code of 1923, as part of Clerk's fees, such fee being 50c for each capias?

"7. 'B' and 'C' being tried, would the Clerk be entitled to one or two fees for trial, such fee being 50c for each trial?

"8. 'B' and 'C' being jointly tried, would the Clerk have to enter judgment and final judgment (sentence) jointly or separately against 'B' and 'C'?

"9. If the Clerk should enter judgment against each separately, would a fee of 50c for entering judgment against two defendants be a proper item of costs, payable out of the Convict Fund under Section 3667, Code of 1923, as part of Clerk's fees, such fee being 25c for entering judgment ?

"10. If the Clerk should enter final judgment (sentence) against each separately, would a fee of 50c for entering final judgment against two defendants, be a proper item of costs, payable out of the Convict Fund under Section 3667, Code of 1923, as part of Clerk's fees, such fee being 25c for entering final judgment?

My answer to your first inquiry is in the affirmative. Of course, the Justice's and Constable's fees both together cannot amount to more than $5.00. This is all the State will pay under Section 3667, Code of Alabama, 1923, "* * * cost of committing magistrate and constable or preliminary trial, both together not to exceed $5.00."

My answer to your second inquiry is in the affirmative for the reason set out in my answer to your first inquiry, that is, the preliminary cost of a Justice of the Peace and Constable cannot exceed $5.00 and any item of cost due the Justice and Constable may go to make up this amount.

Answering your third inquiry, I think the Justice could, if he saw fit, issue the warrant of arrest jointly or severally, but a better practice would be in my judgment, to issue separate writs of arrest, even though the complaint charges them jointly, as one of the defendants may be found in the county of his residence and other one may have absconded from the county or even the state, in which event there would have to be an alias capias. I call your attention to the case of Grantham et al v. The State, 16 Ala. App. p. 38.

It is true this case has to do with the sentencing of defendants indicted jointly and convicted at one and the same trial, but it throws light on the question here involved. I might add the holding in this case fixes the law on the question in the State as the case was before the Supreme Court on petition for certiorari and the Court denied said petition. See case 200 Ala. 698.

My answer to your fourth inquiry is in the affirmative, for the reason set out in my answer to the above questions.

Answering your fifth inquiry, my answer is in the affirmative. I think the better procedure would be to issue separate capiases for the reasons set out in my answer to your former questions.

My answer to your sixth inquiry is in the affirmative for the reasons set out in answer to your inquiries above.

In answer to your seventh inquiry, the Clerk would be entitled to only one trial fee where the parties were tried jointly. There could be but one trial, therefore there could be but one judgment, regardless as to the number of defendants tried jointly.

Answering your eighth inquiry, I call your attention to the case of Grantham, et al v. the State, 16 Ala. App. 38, supra. Under the rule laid down in this case, where two or more persons are charged jointly with an offense and each is convicted at a joint trial, there should be a general verdict of conviction, but the defendants should be sentenced separately. This case says among other things:

"Where two defendants were jointly indicted, tried and convicted of grand larceny, and the verdict of the jury found them guilty as charged in the indictment, a judgment adjudging defendants guilty and separately sentencing each of them to a term in the penitentiary was proper as the offense was a joint and several one."

I have answered your ninth inquiry in answering the eigth. There should be no separate judgment. The judgment should include both defendants, but should be a separate sentence as to each defendant.

My answer to your tenth inquiry is in the affirmative, under the authority of Grantham et al vs. the State, supra.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 29, 1935.

Hon. F. B. Thompson,
Judge of Probate, Clay County,
Ashland, Alabama.

Under Section 353 the penalty of 15% is collectible by the Probate Judge in all cases of delinquency irrespective of whether there has been citation of such delinquent by the License Inspector.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of November 2, 1935, in which you state:

"I write to ask your construction of Section 353 of the 1934 revenue code on pages 304-5 and 6 of same, as it relates to penalties collected by the judge of probate on delinquent licenses, where the license inspector has not issued a citation or issued criminal proceedings. I am collecting this penalty in all cases but very frequently some one comes who is delinquent, but who has not been cited by the license inspector, and who has not been prosecuted either.

"I do not find any direction in said section authorizing the payment of such penalty to the license inspector. The new law leaves out the section defining what shall be paid license inspectors as found on page 319 of the 1929 revenue code. The latter has been construed, I understand in the case McNeal vs. Stiles 189th Southern Reporter page 219, and Stewart against Gilliland 219th Alabama Reporter page 32, also Barnes vs. Aldridge 207th Alabama Reporter page 557, but these do not fit my case.

"I ask this opinion so that I may be protected if litigation follows relative to this matter and if possible would like to have your opinion before the 15th of this month."

In reply, I advise that the cases to which you refer are of only slight bearing on the new statute, the same having been substantially changed. Section 353 makes the payment of the penalty mandatory in all cases of delinquency irrespective of whether the License Inspector has issued citation or commenced criminal proceedings. As to the payment of the penalties to

the License Inspector, this has been the subject of much discussion and an opinion has not yet been rendered. When decided copy of opinion will be mailed you.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 29, 1935.

Hon. Hamp Draper,
Associate Member,
State Board of Administration,
Montgomery, Alabama.

Sections 3650 and 3651 of the Code of Alabama, 1923, are the controlling provisions relative to the returning of persons to their homes upon their discharge from the penitentiary.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of October 4, 1935, with letter of Hon. V. B. Murray, Jr., of the Junior Chamber of Commerce attached, requesting the following information:

"The Sections of the Code relative to this matter are Sections 3650, 3651 and 3716 of the Code of Alabama of 1923. More precisely, the question is whether the Warden at Kilby Prison has the authority to furnish the discharged prisoner a railroad ticket to his destination in lieu of cash furnished him for a railroad ticket. The above three sections of the Code relate to this matter and we desire to know which section governs. In addition to the Code Sections cited, I call to your attention Section 3701."

It is my opinion that Sections 3650 and 3651 are the controlling law relative to the returning of persons to their homes upon discharge from the penitentiary. Although Sections 3701 and 3716 also relate to the matter in hand in view of Act No. 70, Senate 16 of the Acts 1927, page 51, approved February 18, 1927, (Codified in the 1928 Michie Code as Sections 3702 (1) and 3702 (2), which abolishes the hiring of convicts and prohibits the working of convicts in coal mines, they have little or no field of operation.

Therefore, a discharged prisoner is entitled to **"money** sufficient to enable him to reach his destination, not exceeding $10.00." Should he desire **money,'** the authorities give no power to the discharging officials to force the departing man to accept a railroad or other ticket in lieu of such money.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 29, 1935.

Hon. J. R. Copeland,
Judge of Probate, Blount County,
Oneonta, Alabama.

Under facts party held not liable for the license levied by Schedule 36.2 of the 1935 Revenue Act.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of November 7th, in which you state:

"Would Mr. Miller be liable to pay a privilege license as provided by Schedule 36.2 of the revenue code of 1935 under the following conditions?

"Mr. Blackwood operates a small coal mine, what is known as a wagon mine, he contracts to supply a County High School with coal. Mr. Miller, a farmer, has several children as students in this school, and being desirous of paying their tuition or matriculation fees, agrees with the principal of the school to haul the coal with his wagon and team from the mine to the school, hauling about 3000 lbs. each load; Mr. Blackwood has paid no license as provided under this schedule"

In reply I beg to advise that if Mr Miller hauls no other coal but that which you specify, and is not engaged generally in the business of delivering or selling coal, I do not think he is liable for the license levied by Schedule 36.2 of the Revenue Act of 1935.

Yours very truly,
A. A. CARMICHAEL,
Attorney General

November 29, 1935.

Hon. W. G. Little, Sumter County,
Probate Judge, Sumter County,
Livingston, Alabama.

License—

1. Out-of-State firms receiving and collecting articles for cleaning, pressing and dyeing in the State of Alabama, are liable for the State and County license provided for such reception and collection in each county of the State in which said articles are received and collected.

2. Out-of-state firms receiving and collecting articles for laundry in the State of Alabama, are liable for the State and County license provided for such reception and collection in each county of the State in which said articles are received and collected.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 26, 1935, which follows:

"Two Laundries in Meridian, Mississippi, send Agents to solicit business in Sumter, Marengo and Choctaw Counties. They solicit laundry, cleaning and dyeing, the agent doing his own collecting of such articles. They have no central collecting place.

"1. I would like to know whether the $15.00 license referred to in Schedule '35' (page 248) of the recent Revenue Bill covers all three counties or whether they are required to pay $15.00 in each county.

"2. Whether this license covers cleaning and dyeing as well as laundry.

"3. Whether the out of State man referred to in Schedule '79', page 271 is required to pay the license for each town where he has no collecting point or the one license for the county.

"4. Whether one license will cover his points in Sumter, Marengo and Choctaw, or he is required to purchase a license for each county.

"5. How many licenses are required of an out-of-state laundry, soliciting laundry, cleaning and dyeing in Alabama?"

As I interpret your letter, the "laundries" in Meridian, Mississippi, to which you refer, have agents who operate in Alabama in such a manner as to make them liable for a license for the reception and collection of articles to be cleaned, pressed and dyed and for a license for the reception and collection of articles for laundry. The last sentence of Schedule 35, Schedule 348, Chapter 1, Article 13, of the Revenue Act of 1935, which is the Schedule levying the license for operation of a cleaning, pressing and dyeing business, reads:

"Provided that a person not having a place of business within the State of Alabama where such work is actually performed, shall pay a license of Fifteen Dollars ($15.00) for the reception and collection of such articles."

The last sentence of Schedule 79, Section 348, Chapter 1, Article 13, of the Revenue Act of 1935, which is the Schedule levying a license for the operation of a laundry business, reads:

"Provided further that a person not having a place of business in the State of Alabama where such work is actually performed shall pay a license of Twenty-five Dollars ($25.00) for the reception and collection of laundry."

As you see from the above quoted parts of the Revenue Act, supra, there is a license for out-of-state firms receiving and collecting articles for cleaning, pressing and dyeing, and also a license for out-of-state firms receiving and collecting articles for laundry. It makes no difference that the same firm is engaged in both businesses. It must pay a license for each business in which it is engaged, if a license is required for engaging in such business.

We next come to the question of whether or not a person who is required to pay a State license under the Schedule quoted above must also pay a County license. This question is clearly answered by subparagraph (b) of Section 350, Chapter 1, Article 14, of the Revenue Act of 1935, which reads:

"(b) There is also hereby levied for the use of each county in the State a license or privilege tax upon each person, firm or corporation engaged in, or who shall carry on any of the occupations, business, professions, or callings, or shall exercise any privilege or do any act for which a license is charged by the State, or fifty per cent of the State license or privilege tax, except as herein otherwise provided."

Therefore, the firms mentioned in your letter must pay, in addition to the amount of the State license required of them by Schedule 35, supra, and Schedule 79, supra, fifty per cent of these amounts as county license, as provided by sub-paragraph (b) of Section 350, supra.

The next question that confronts us is whether or not a firm that is required to pay the above licenses is only required to pay one State and

County license, or whether or not it must pay a State and County license in each county in which it operates. Subparagraph (a) of Section 350, supra, provides:

"(a) Whenever a license is levied in this Act, there shall be collected both a State and County license for each place of business, except as specifically otherwise provided."

The firms mentioned in your letter are required to pay license for the privilege of receiving and collecting. They receive and collect in more than one county, and it may be said, therefore, that they have a place of business in each county in which they receive and collect, even though they actually have no established place of business in any county. Therefore, it is my opinion that they should pay the State and County license provided for such businesses in each county in which they receive and collect. Summarizing the above, we conclude that an out-of-state firm which receives and collects articles for cleaning, pressing and dyeing, in the State of Alabama, is liable for a State license of $15.00, and a county license of fifty per cent of this amount, in each county in which it receives and collects such articles, as provided by Schedule 35, supra, and subparagraph (b), of Section 350, supra; and that an out-of-state firm which receives and collects articles for laundry in the State of Alabama is liable for the State license of $25.00, and a county license of fifty per cent of this amount in each county of the State in which it receives and collects such articles, as provided by Schedule 79, supra, and subparagraph (b), of Section 350, supra.

Yours very truly,
A. A. CARMICHAEL,
Attorney General

November 29, 1935.

Hon. Winston Stewart,
Judge of Probate,
Coosa County,
Rockford, Ala.

House Bill No. 751 held constitutional and construed as to the use of hoop nets, gill nets, trammel nets, seines and all similar fishing devices.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 19, 1935 in which you request my opinion as to the constitutionality of House Bill No. 751 by Sanford, which pertains to the game and fish laws of the State. Then you request, in case the law is constitutional, the answer to the following questions:

"1. Is there a variance in the caption and Section one of the bill as to the character of fishing devices prohibited?

"2. Under Section one of the Bill are Fish Baskets prohibited in this State?

"3. Under Section one of the Bill are Slat Baskets prohibited in this State?

"4. Under Section one of the Bill are Wire Baskets prohibited in this State?

"5. Under Section one of the Bill are Thread or Twine Baskets in this State prohibited?

"6. Has the State authority to regulate the waters of a navigable stream?

"7. Under Section one of the Bill is it lawful to fish with any character of baskets?

"8. Under Section one of the Bill is it unlawful to fish with fishing device other than hoop nets, gill nets, trammel nets and seines, and if so, what other devices?

"9. Is it unlawful for a person to have any of the prohibited devices at his home where he lives within one-half mile of artificially impounded waters of this State?

"10. If you rule that the bill in itself is legal, how are the boundary lines of the impounded waters to be ascertained?"

I think the Act you refer to is constitutional and valid. The caption seems to be full and to contain a complete synopsis of what is contained in the Act. Therefore, my answer to your first inquiry is in the negative.

My answer to your second inquiry is in the affirmative.

My answer to your third inquiry is in the affirmative for the reason Section 1 of said Act provides as follows:

"Section 1. That the use of hoop nets, gill nets, trammel nets, seines **and all similar fishing devices** is, by this Act, prohibited in all artificially impounded public waters of this State, and in all waters within one mile below any lock or dam constructed on any river or other body of public water in this State."

My answer to your fourth inquiry is in the affirmative, for the reason given to the answer to your third inquiry.

My answer to your fifth inquiry is in the affirmative for the reason given in my answer to your third inquiry.

My answer to your sixth inquiry is in the affirmative; that is, the State has authority to regulate the taking of fish from navigable streams in Alabama.

My answer to your seventh inquiry is in the negative.

My answer to your eighth inquiry is, that any device that resembles a seine, gill net, hoop net, or trammel net is forbidden in Alabama under the bill referred to.

Answering your ninth inquiry, the having of any of the above mentioned fishing paraphernalia in a boat or in your home within a half mile of the waters herein designated is prima facie evidence of the violation of the law, but certainly this could be counteracted by proof that they had not and were not intended to be used in such waters.

Answering your tenth inquiry, the boundary line of impounded waters would be the line where the water begins to be stagnated or held back as contradistinguished from free moving natural water.

Yours very truly,
A. A. CARMICHAEL,
Attorney General

November 29, 1935.

Hon. James H. Hard, Jr.,
Director of Personnel,
Jefferson County Personnel Board,
Birmingham, Alabama.

Jefferson County—Anti-nepotism Act (Local Acts 1932, p. 96) repealed by Civil Service Act (Act No. 284, approved August 28, 1935).

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of October 22, 1935, which is as follows:

"Act No. 245, approved November 9, 1932 (found on page 96 of the Local Acts of 1932), and known as the Anti-nepotism Act, provides that no person who is related within the fourth degree, by blood or marriage, to any public official in the county shall be eligible for public employment.

"Act No. 284, approved August 28, 1935, commonly known as the Civil Service Act, provides a new system of employment for all governments coming under the provisions of the Act. Section 37 of this Act repeals all laws in conflict therewith.

"Does the Civil Service Act repeal the Nepotism Act?"

I am of the opinion that your inquiry should be answered in the affirmative.

The Civil Service Act provides for the method and manner of employment of employees in counties of 200,000 or more population (Jefferson County). It sets out in detail the procedure to be followed in all such cases. It places the employment of employees of Jefferson County on the so-called "Civil Service System". Section 37 of the Act provides as follows:

"Section 37. REPEALING CLAUSE. All laws or parts of laws inconsistent with or in conflict with this act are hereby expressly repealed, subject to the provision of Section 38 hereof, including but not limiting the generality hereof to all laws purporting to set up civil service plans or systems in such county or in any city therein. Specifically and again without limiting the generality of the above, all laws or parts of laws, whether local or general, the effect of which is to prescribe a different method of selection or appointment or to fix tenure of office or employment and the rate of compensation for services contrary to the express or implied effect and provisions hereof are repealed, it being the legislative intent that the terms of this act shall be fully effective, any law or parts of laws heretofore enacted, to the contrary notwithstanding."

It will be seen that the above repealing clause is broad and inclusive. The Anti-nepotism Act in question and the Civil Service Act in question cannot be operative together. They are in conflict. Therefore, in my opinion, the Civil Service Act, being the last enactment of the Legislature, repeals the Anti-nepotism Act.

The above opinion is based on the assumption that the Civil Service Act in question is constitutional, a point which is not here decided.

Yours very truly,
A. A. CARMICHAEL,
Attorney General

November 30, 1935.

Hon. F. B. Thompson,
Judge of Probate, Clay County,
Ashland, Alabama.

License—Auctioneers.

Person actually selling at public outcry is party required by Schedule 11 of the 1935 Revenue Act to take out license as auctioneer.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of November 14, requesting opinion as to the person liable for license under Schedule 11 of the 1935 Revenue Act under the following statement of facts:

"A is a real estate broker, having paid real estate license and qualified to do business as a real estate broker in Alabama: A has in his employment one, B, who is a real estate agent for A; A at times conducts public auctions of real estate for farming lands, etc., which said auction sales do not come within the exemptions from licenses as auctioneer mentioned in said Schedule 11 requiring Auctioneer's License; at these said Real Estate Auction sales the said B, real estate agent in the employment of A, actually conducts the auctions, that is, cries the sales of the real estate sold. The question I desire answered is this: Should the Auctioneer's License required under said Schedule 11 be issued to A, the real estate broker, or should such Auctioneer's License be issued to B, the agent of A and the man who actually cries the real estate sales? A has raised the question, contending that said Auctioneer's License should be issued to him, the said A, in order that he may be privileged to use other Auctioneers, should he so desire, than the said B without being required to obtain another and different Auctioneer's License."

In reply, I beg to advise that the license levied by Schedule 11 is levied on "auctioneers". Corpus Juris defines "auction" as "a public sale of property to the highest bidder by one licensed and authorized for that purpose." It likewise defines as an auctioneer, "one who sells goods at public auction for another on commission, or for a recompense; one who conducts a public sale or auction, although the goods sold are his own." Other definitions are: "A person authorized by law to sell goods or others at public sale." Bouvier Law Dictionary.

"A person who is authorized to sell goods or merchandise at public auction or sale for recompense or as is commonly called, a commission." Goshen v. Kern, 63 Ind. 468.

"The business of an auctioneer is to sell by public outcry the property of others on an agreement express or implied that he shall receive for his labor and skill a just compensation." 3 Phila. (Pa.) 440.

"Auctioneers differ from brokers in that the latter may both buy and sell, whereas auctioneers can only sell." McMechen v. Balt. 3 Harr, and J. (Md.) 534.

"The word 'auctioneer' is sometimes used to designate the crier who simply calls for bids and strikes a bargain at the auction sale. His con-

nection with the sale may begin with the calling for bids and end with striking the bargain." 179 Mass. 427.

It appears from the foregoing that "the auctioneer is the person who actually sells the property at public outcry." Under the facts set out by you, therefore, B is the proper party to take out the license, as he is the party who does the actual selling at auction.

Yours very truly,
A. A. CARMICHAEL,
Attorney General

November 30, 1935.

Hon. Sam Drinkard,
Tax Collector, Marengo County,
Linden, Alabama.

Interest on delinquent taxes should be collected at rate of 8% per annum from date of delinquency through September 30, 1935 and at the rate of 6% thereafter.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of November 1, 1935, stating:

"I, as a new tax collector, am collecting 1934 uncollected tax of J. J. Marion, the ex-tax Collector, who died on the 25th of September, 1935. Some of the taxpayers are not satisfied with me collecting 8% interest on this tax, and insist that they are only entitled to pay 6% interest.

"Will you please render an opinion at once, and oblige?"

Replying, I advise that in an opinion rendered to Joseph B. Crow, Tax Collector of Mobile County, under date of February 28, 1935, I held that delinquent taxes were subject to interest at 8% (Section 3056 of the Code of 1923) from date of delinquency.

This was changed by the Revenue Act of 1935 to 6% but in my opinion, such statute has a prospective effect. You should therefore collect interest at the rate of 8% per annum from date of delinquency through September 30, 1935, and at the rate of 6% thereafter.

Yours very truly,
A. A. CARMICHAEL,
Attorney General

November 30, 1935.

Hon. H. L. Bishop,
Tax Assessor, Etowah County,
Gadsden, Ala.

Automobiles in the State on October 1, 1934, or brought into the State before the last Monday in March, 1935, are subject to assessment and payment of ad valorem taxes as of October 1, 1935.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of October 26th in which you state:

"I am taking the liberty of asking for an immediate ruling as to the length of time a motor vehicle must be in the State before it becomes subject to ad valorem taxes. I should like to know the last date before the 1st day of October, 1935, that a motor vehicle could have been brought into the State and be exempt from ad valorem taxes due October 1st, 1935.

"I trust I have made this matter clear as the 1935 Revenue Code is confusing to me in this connection. There are so many automobile owners claiming exemption that I desire to be put right at once.

"We are exempting all new cars purchased since April 1st, 1935 but I am a bit confused as to used cars that have come into the State this year."

In reply, I beg to advise that a motor vehicle which was in the State on October 1, 1934 or brought into the State before the Assessor closes his books, which under Section 38, Acts 1923, p. 152 (Section 160, p. 113, 1929 Compilation) is the last Monday in March, is subject to assessment and the payment of ad valorem taxes when a license is applied for after October 1, 1935. Subsection (2) of Section 18, Acts 1927, p. 139, appearing as Section 20, page 214 of the 1929 Compilation, provides that motor vehicles "brought into this State after the 1st day of October and before the Tax Assessor has completed his asessment, shall be subject to taxation the same as if it had been held or owned in the State on the 1st day of October."

It is true that the 1935 Revenue Code changes the date on which the Tax Assessor is required to close his books. While automobiles are assessed and paid on at the same time, yet the liability is fixed as of the previous year, and it is my judgment the closing date of the Tax Assessor's books, as fixed by previous law governs. While you actually assess automobiles on October 1, 1935, the assessment is as of October 1, 1934.

The foregoing applies to all automobiles whether new or used cars. Generally speaking the presumption is that a used car was in the State and subject to taxation prior to the last Monday in March. That might, in a particular case, be a question of fact for you to determine.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 30, 1935.

Hon. Thomas D. Eubanks,
Tax Asessor, Marshall County,
Guntersville, Alabama.

Taxes—Under the facts set out automobiles held liable for ad valorem taxes.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of October 3, 1935, in which you request my opinion as follows:

"You will please render opinion on the assessment of cars sold by dealers that have been used as a demonstrator.

"John Doe, dealer uses a car for a demonstrator from Jan. 1st until July of the same year. No taxes have been paid on this car except by the dealer as part of his stock. After using it until July he sells it and car passes to the second person who applies for a tag. Car was assessed and taxes paid on same as a new car. The dealer contends that no taxes should have been collected inasmuch as it was sold after April 1st."

In reply I wish to advise that in my opinion, the dealer's contention in regard to the above matter is incorrect.

Of course, I am assuming that the car was brought into the State during the period between October 1st and the date that tax assessor closed his bo and was therefore taxable as of October 1st, 1934.

I find no provision of law exempting a car from taxation because it has been used as a demonstrator for a few months and sold after April 1st.

It is, therefore, my opinion that the car should have been assessed and taxes paid on same as a new car, as was done in this case according to your letter.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 30, 1935.

Hon. Shelby S. Fletcher, Senator,
Fourth District, Madison County,
Huntsville, Alabama.

Alabama Bridge Corporation—Assets of Alabama Bridge Corporation cannot be used to pay one class of bonds in preference to another class.

Opinion by the Attorney General.

Dear Sir:

This is to acknowledge receipt of your letter of November 27, 1935, together with a copy of a bond issued by the Alabama Bridge Corporation, and an indenture dated the 1st day of December, 1927, by and between the Alabama State Bridge Corporation, a corporation, and the First National Bank of Montgomery, Alabama, a corporation, as trustee for the bondholders.

Your letter reads as follows:

"The Alabama Bridge Corporation has at the present time on deposit certain sums of money which it desires to apply in a definite manner. I desire to know if the Bridge Corporation can apply these funds to the payment of the installment on bonds due on December 1, 1934, interest on those bonds, or whether the corporation would be required to pay interest on all outstanding bonds of the corporation."

In answer to your inquiry, I am of the opinion that the moneys accumulated would have to be used for the payment of all past due bonds and interest proratably. In my opinion one set of outstanding bonds which are in default cannot be paid in preference to another set of bonds in default or in

preference to any interest that has become due. This is true regardless of the time of default.

The bond in question provides for the payment of principal and interest alike. The bond also incorporates as part thereof the indenture above referred to. The indenture also treats the payment of principal and interest alike. The indenture contains the following proviso:

> "BUT IN TRUST NEVERTHELESS for the equal, proper and proportionate benefit and security severally and respectively of all and every, the present and future holders of any and every bond issued under and secured by this indenture, without preference, priority, or distinction as to lien or otherwise, of any one bond over any other bond, so that each and every bond issued as aforesaid shall have under and by this indenture, the same right, lien and privilege as every other bond issued hereunder; and so that the principal and interest of every such bond shall, subject to the terms hereof be secured hereby equally and proportionately with every other such bond; it being intended that the lien and security of all such bonds shall take effect from the day of the date of this indenture, without regard to the date of actual issue, sale or disposition thereof; and so that the lien and security of this indenture and of all bonds issued hereunder, shall take effect from the day of the date hereof as though upon such date all such bonds actually had been issued, sold and delivered to, and were then in the hands of innocent holders for value.
>
> "And hereby it is expressly convenanted that all such bonds and the coupons for interest thereon are to be issued, authenticated, delivered, received and negotiated, and that the properties mortgaged, pledged and assigned are to be held by the Trustee subject to the following terms and provisions:"

It will be noted from the above that payment should be made without regard to preference and priority of all claims that have accrued.

The Bridge Corporation was created under the provisions of Act No. 292, H. B. 341, approved August 31, 1927 (Acts 1927, p. 278). Subsection 5 of Subsection 4 of Section 2, provides in part as follows:

> " * * * The tolls collected from said bridges, as hereinafter provided, shall be kept in a separate fund by the State Treasurer, and are hereby specially pledged for the payment and retirement of the notes, bonds and mortgage, principal and interest, as the same become due, until the whole of them shall be paid."

It will be noted from the above that principal and interest are treated alike and payable as same become due. When claims have become due, whether same be principal or interest, and regardless of when they become due, they should be treated alike without regard to priority.

The bondholders hold a mortgage or lien on the properties of the Alabama Bridge Corporation, and one claim should not be given preference over another.

Although coupons are usually paid as they fall due, those past due are not entitled to be first paid ,when they are to be paid out of the mortgaged property, but in such cases if the proceeds are insufficient to pay all the coupons, as well as the bonds themselves, the bonds and all the coupons are entitled to a pro rata distribution, priority attaching to neither bonds nor coupons.—**Simonton on Municipal Bonds,** pp. 135 and 136.

The premises considered, it is my opinion that one class of bonds cannot be given priority over another class either as to principal and interest or interest coupons. All past due obligations should be treated alike, and should share equally in the assets on hand on a pro rata basis. This is applicable only to those claims that are past due and unpaid and does not affect those which will become due at a future date.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 30, 1935.

Hon. A. G. Teague,
Clerk of the Circuit Court,
St. Clair County,
Pell City, Alabama.

Where a defendant is convicted for the crime of abortion and is sentenced to four years in the penitentiary and fined $250.00 under Section 3191, Code of Alabama 1923, there should be only one transcript sent to the Convict Department and the cost is paid under Section 3667, Code of Alabama, 1923.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 23, 1935, in which you request my opinion as follows:

"At the fall term of the Circuit Court held here in Pell City, Wyoming Johnston, was convicted of committing the offense of abortion, and was sentenced to four years in the penitentiary, and also was fined to the amount of $250.00. The defendant being unable to pay the fine was sentenced to hard labor for St. Clair County, Alabama, to pay for said fine and cost. I sent to the Convict Department a transcript for both the penitentiary sentence, and the hard labor sentence.

"Should just one transcript be sent, and can a person be sentenced to hard labor to pay for fine and cost, after said person had already been sentenced to the penitentiary for the offense, and should the number of days that said party was sentenced to hard labor, have been added to the four years sentence in the penitentiary."

It is my opinion the defendant should be sentenced to the penitentiary for a term of four years and to an additional sentence of so many days to pay the fine. This is a felony and can be no sentence for the costs. Therefore the cost is paid under Section 3667, Code of Alabama, 1923. There should be only one transcript as there was only one trial and one conviction. You will notice the statute for abortion says that "the defendant on conviction must be fined not more than $500 and imprisoned in the penitentiary for not less than two nor more than five years." See Section 3191, Code of Alabama, 1923. Of course, there should have to be two sentences; one for the four year term in the penitentiary and an additional sentence for a certain number of days at hard labor to pay the fine. I might state further than if the defendant is worth the money and it can be made on execution this would be preferable

instead of sentencing to hard labor to the county and in this event the sentence would only be for four years in the penitentiary. But should the defendant be insolvent, then the sentence would be as stated above.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 30, 1935.

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Dental Associations—

Act No. 435 approved September 13, 1935 held to require the payment to the Alabama Dental Association of 25% of all monies **paid into the State Treasury** by dentists for license which amount does not include the Probate Judge's commission for remitting money collected on licenses.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of November 8, 1935, as follows:

"House Bill No. 968 approved September 13, 1935, provides 'That 25% of all moneys paid into the State Treasury by Dentists for licenses or occupational taxes shall be paid over annually to the Secretary-Treasurer of the Alabama Dental Association.'

"1. Does this apply to 25% of moneys remitted by Probate Judges after deducting their commission or 25% of the original licenses."

In reply, I beg to advise that Section 1 of Act No. 435 House Bill 968 approved September 13, 1935 to which you refer provides in part as follows:

"That twenty-five per centum of all monies **paid into the State Treasury** by dentists for licenses or occupational tax shall be paid over to the Secretary-Treasurer of the Alabama Dental Association."

It is my understanding that the Probate Judge deducts his commission of 2½% allowed him for remitting money collected for licenses before he remits the same into the State Treasury.

Therefore under the specific terms of the Act, the twenty-five per centum payable to the Dental Association would be twenty-five per centum of the actual amount paid into the State Treasury.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 2, 1935.

Hon. H. M. Brittain,
Judge of Probate,
Randolph County,
Wedowee, Alabama.

Schedule 10 of the 1935 Revenue Law is constitutional and the Probate Judge should collect all of license required thereunder. There is no au-

thority for Probate Judge to collect part of a license and if applicant fails to pay all of the license and fee, prosecution should commence when same becomes delinquent. The State of Alabama is not a collecting agency for the State Bar Association.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of October 14, 1935, in which you state:

"As Probate Judge of Randolph County, Alabama, I am writing for a ruling of the Attorney General on the following, same pertaining to the 1935 Revenue Code, same effective Oct. 1st, 1935; and is as to Schedule 10; same applicable to attorneys:

"The lawyers of this County en masse practically say that section of the Revenue Code, or Schedule 10 is unconstitutional in part; in fact they say they are preparing to tender the Probate Judge (myself) the sum of $15.50 in legal tender and demand the license; their contention is that the State cannot become a collecting agency of the State Bar Association; and further that the license as shown on the fact of said schedule is only $15.00; further they say that the State Bar Association since 1923 has been trying to obtain and collect this fee by indirect and devious methods and that by tacking the same in the License Schedule the said Association is indirectly trying to obtain that which is in itself illegal.

You request my opinion:

"1. The question is that, is Schedule No. 10 of the 1935 Revenue Code, same effective Oct. 1st, 1935, constitutional in its entirety?

"2. Is or should the Probate Judge accept the $15.50 under protest and hold the same pending the court test of this question, or should I as Probate Judge insist on the sum of $25.00 plus 50c fee, and let prosecution commence against the lawyers after Oct. 31st?

"3. Further, is the State of Alabama a collecting agency for the State Bar Association and is it legally or constitutionally so?

"4. Again, must I insist strictly on the lawyers paying the $25.00 plus the fee, I wish to do my duty righteously and conscientiously and as the law demands of me?

It is my opinion that your first question should be answered in the affirmative.

I have carefully examined Schedule 10 of the 1935 Revenue Law and I have been unable to find where said schedule violates any provision of the Constitution of Alabama.

I call your attention to the following authorities:

Phoenix Assurance Company v. Montgomery Fire Department, 117 Ala. 631, 20 So. 843;

Dunlap v. State, 16 Ala. App. 441, 78 So. 639;
Cobbs v. Home Insurance Company, 18 Ala. App. 206, 91 So. 627;
Cooley Constitutional Limitation (8th Ed.) p. 1026 et seq.

Irrespective however of the validity of that portion of Schedule 10 providing for the use by the State Bar Association of $10.00 of the license levied, I am of the opinion that the Schedule is so severable that the levying portion, which in plain terms levies an annual license of $25.00, is not affected by any weakness of the latter portion which may possibly exist.

"An Act with invalid part thereof deleted if complete within itself, sensible and capable of execution, will stand notwithstanding partial invalidity."

Springer v. State, ex rel., Williams, 229 Ala. 339, 157 So. 219.

In answering your second question it is my opinion that the Probate Judge should collect all of the license prescribed by Schedule 10 of the Revenue Law, as there is no statute in Alabama authorizing partial payment of a license, even to a person authorized to receive such payments. If all of the license and fee is not paid, then prosecution should commence when the same is delinquent.

"Payment of a license fee may be and generally is required as a condition precedent to the issuance of a license and engaging in business, and a license issued before such payment is void."—37 C. J. 251, Sec. 119, N. 87-88.

"Primarily the amount of the fee or tax for which a license is liable is the full amount prescribed for the license period for the particular occupation or privilege in which he is engaged and a valid license cannot be issued for a fee less than prescribed."—37 C. J. 250, Sec. 116 N. 56-57.

"The law ordinarily intends that taxes shall be paid in full at one time, and unless it is otherwise provided by statute, a taxpayer cannot tender a portion of the tax and demand a receipt therefor."—61 C. J. 965, Sec. 1244, N. 32-33.

In answering your third question, the State of Alabama is not a collection agency for the State Bar Association, but the Legislature of Alabama has authority to require certain rules and regulations for the lawyers of the State and to provide for the State Bar Association.

Ex parte Thompson, 228 Ala. 113, 152 So. 229; In re Fite, 228 Ala. 4, 152 So. 246 (and cases cited in the above cases).

I think that in answering your second question, I have also answered your fourth question fully.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 2, 1935.

Hon. S. W. Hawkins,
Chairman, Board of Registrars,
Jefferson County,
Birmingham, Alabama.

Elections—An alien who has become a naturalized citizen is due all poll tax from the time he becomes an inhabitant of this State and is over

twenty-one years of age and under forty-five years of age, regardless of when he became naturalized.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of November 20, 1935, which reads in part as follows:

"There is an Assyrian, by birth, living in Jefferson County. He is thirty-seven years of age and has lived in this State and County for several years, but has just been naturalized.

"I desire an opinion as to what poll tax he is due, and as to whether or not he would be due a poll tax from the date that he became twenty-one years and was living in Alabama, or whether or not he would be due to pay a poll tax from the day he came naturalized.

In answer to your inquiry, I am of the opinion that a poll tax is due by each inhabitant of this State over the age of twenty-one years and under forty-five years, not exempt by law.—**Section 194, Constitution, 1901; Section 3029, Code of Alabama, 1923; Biennial Report of Attorney General 1928-1930,** p. 723.

The fact of being a foreigner, not naturalized, and, therefore, not qualified to vote, does not exempt from payment of poll tax. Being due a poll tax is dependent upon age and residence and the further fact that one is not exempt from payment of poll tax. The fact that one is an unnaturalized foreigner does not constitute an exemption from payment of poll tax.

Poll tax is due October 1st of each year.—**Shepherd v. Sartain,** 185 Ala. 439.

It is due to be paid in the County in which such person legally resides at the time it is due.—**Frost v. State, 153 Ala. 654.**

The payment of all poll tax due is one of the conditions upon which a person is allowed to vote in Alabama.—**Section 178, Constitution of Alabama.**

It, therefore, follows that the person named by you, unless exempt for some other reason than as stated by you, must pay a poll tax for each year he has been a resident of the State of Alabama since he was twenty-one years of age. To determine this, he must count from the first day of October after becoming twenty-one years of age. If he became twenty-one years of age on the first day of October, his first poll tax became due that day. If he became twenty-one years old on October 2nd, his first poll tax became due October 1st of succeeding year.—**Shepherd v. Sartain,** 185 Ala. 439, 30th head note.

An opinion of this office rendered to the Judge of Probate of Cullman County on March 9, 1929 (Biennial Report of Attorney General, 1926-1930, p. 229) being in conflict with the above, is hereby overruled and withdrawn.

Yours very truly,
A. A. CARMICHAEL,
Attorney General

December 2, 1935.

Hon. Frank M. Stewart, Secretary,
Alabama State Milk Control Board,
Montgomery, Alabama.

1. State Milk Control Board has authority under the Hamner Milk Control Act, House Bill No. 311 to cooperate with authorities of other States and the Secretary of Agriculture under the Agriculture Adjustment Act.

2. Dealers licenses based upon the number of gallons handled daily.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your request for my opinion, and your letter withdrawing your request for opinion on questions numbered 1 and 2. I am therefore rendering an opinion on the remainder of your request which reads as follows:

"3. Does the State Milk Control Board have authority to cooperate with authorities of other states and the Secretary of Agriculture, under the Agricultural Adjustment Act? (If so will you kindly notify Dr. K. W. Gaumnitz, Chief, Dairy Section, South Agricultural Building, Washington, D. C., and mail us copy of said letter?).

"4. Upon what basis as set out in Section 11 of the Act are distributors required to pay licenses, only on that amount sold as fluid milk or on the total amount handled daily through said distributors plant."

In reply I wish to advise that in my opinion your third question should be answered in the affirmative.

Section 22 of the Act in question, provides as follows:

"Section 22. Cooperation with other Governmental Agencies: In order to secure a uniform system of milk control, the Board is hereby vested with power and it shall be its duty to confer and cooperate with the legally constituted authorities of other States and of the United States, including the Secretary of Agriculture of the United States, in the effectuation of the purposes of the Agricultural Adjustment Act and for the foregoing purposes, the Board shall have power to conduct joint hearings, issue joint or concurrent orders and exercise all its powers under this Act."

It is my opinion that you are authorized under this section to confer and cooperate with authorities of other states and the Secretary of Agriculture.

In reply to your fourth question, in which you base your inquiry upon Section 11, of the Act in question, I advise you that I find no distinction drawn between fluid milk and any other form or product of milk in this section.

In my opinion the license schedule as set out in Section 11 of this Act is based upon the number of gallons handled per day.

This section provides in part as follows:

"PRODUCER-DISTRIBUTOR: Where a producer-distributor buys milk in addition to that produced by him, he shall pay a license fee as a producer on the amount he produces and as a distributor on the amount he buys. DISTRIBUTOR: **Distributors and Processors who handle less than fifty gallons per day—a license fee of Ten Dollars ($10.00) per year. Distributors and Processors who handle more than fifty gallons per day but less than one hundred gallons per day—a license fee of Twenty-five Dollars ($25.00). Distributors and Processors who handle more than One Hundred gallons per day, but less than Five Hundred gallons per day—a license fee of Fifty-Dollars ($50.00). Distributors and Processors who handle more than five hundred gallons but less than One Thousand gallons per day—a license fee of One Hundred Dollars ($100.00). Distributors and Processors who handle more than One Thousand gallons per day—a license fee of Two Hundred Fifty Dollars ($250.00) per year.**"

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 2, 1935.

Hon. John Dale Bonner,
Chairman, Board of Registrars, Wilcox County,
Oak Hill, Alabama.

Board of Registrars—length of visit to each precinct for purpose of registering persons entitled to register may be fixed by the Board of Registrars, but said visit cannot be less than one-half day in each precinct.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of November 1, 1935, which reads as follows:

"There seems to be some misunderstanding as to how long the Board of Registrars must sit at each Precinct during our rounds over the County. The law reads that we must stay at least one-half day at each place, but before I begin on my rounds I want an opinion from you."

In answer to your inquiry, I call your attention to that part of an Act approved August 20, 1927, (General Acts 1927, p. 274) which deals with the meetings of the Board of Registrars:

"The board of registrars in each county shall visit each precinct at least once and oftener if necessary between October first and December thirty-first, 1927, and each two years thereafter to make a complete registration of all persons entitled to register, and shall remain there at least one half a day. They shall give at least twenty days' notice of the time when, and the place in the precinct where they will attend to register applicants for registration, by bills posted at three or more public places in each election precinct, and by advertisements once a week for three successive weeks in a newspaper, if there be one published in the county. Upon failure to give such notice or to attend any appointment made by them in any precinct, they shall, after like notice, fill new appointments therein. The time consumed by the board in completing such registra-

tion shall not exceed thirty working days in any county, except that in counties having more than one hundred and fifty thousand population as shown by the last preceeding census, the time shall not exceed seventy-five working days. The board of registration in each county shall meet at the court house on the fourth Monday in January, 1928, and each two years thereafter and shall remain in session ten working days for the registration of voters."

From the above quoted portion of the Act of 1927, supra, it is very clear that while the length of the visit of the Registrars to the County Precincts for the purpose of registering persons entitled to register may be fixed by the Board of Registrars, said visit cannot be less than one-half day in each precinct.

As to special registration, see Act approved October 4, 1932, (General Acts 1932, p. 67).

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 2, 1935.

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Judge of Probate entitled to receive commission of two and one-half per cent on entire twenty-five dollars collected for attorney's license under Schedule 10 of the 1935 Revenue Act. Alabama State Bar Association to receive ten dollars of each twenty-five dollars collected by Judge of Probate under Schedule 10 of the 1935 Revenue Act.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of November 8, 1935, in which you state:

"Schedule '10' page 238 of the Revenue Code of 1935 provides that 'Each Attorney engaged in the practice of law shall pay an annual license of Twenty-five dollars to the State.' In the same schedule the law provides that 'Ten Dollars of the license herein levied—shall remain in the State Treasury and shall constitute a separate fund to be disbursed by the State Treasurer on the Order of the Board of Commissioners of the Alabama State Bar Association.' "

You request my opinion:

"1. Does the Probate Judge receive a commission on the entire twenty-five dollars?

"2. Does the Alabama State Bar Association receive the entire Ten Dollars in each instance or Ten Dollars less the commission allowed the Probate Judge?"

It is my opinion that your first question should be answered in the affirmative. Schedule 10 of the 1935 Revenue Act provides that, "Each attorney engaged in the practice of law shall pay an annual license of twenty-five

dollars to the State." The entire payment made to the State by an attorney under the section, supra, is for a State license to practice law for one year, as the statute expressly states that no license shall be paid to the County.

As Schedule 10 of the 1935 Revenue Law, does not prescribe the way or the person to whom said license shall be paid, it is necessary to look to some other section of the law to arrive at the legislative intent in regard to the collection of said license. It is my opinion that the Legislature by omitting to provide any definite or special procedure for the payment of said license intended for the license to be collected by the Judge of Probate in the same manner as other license are collected.

> "The intention of the Legislature, embodied in a statute, is the law, the fundamental rule of construction, to which all other rules are subordinate, is that the Court, shall by all aids available, ascertain and give effect, unless it is in conflict with constitutional provision, or is inconsistent with the organic law of the State, to the intention or purpose of the legislature as expressed in the statute."—59 Corpus Juris, p. 948.
>
> Street v. Coe, 207 Ala. 631, 93 So. 591;
>
> Sunflower Lumber Co. v. Turner Supply Co. 158 Ala. 191, 48 So. 510.

I refer you to an opinion of the Attorney General to Hon. John Brandon, State Treasurer, on September 10, 1935, which held that the license fee of twenty-five dollars, under Schedule 10 of the 1935 Revenue Law, is to be collected through the Probate Judge in the same manner as other licenses are collected.

Section 365 of the 1935 Revenue Act at page 381, provides the amount of compensation to be paid the Probate Judge for collecting the licenses due the State. Part of said section is as follows:

> "* * * The Judge of Probate shall be entitled to receive two and one-half per cent of the amount of money collected for licenses due the State, which he may deduct from his remittance to the State Treasurer, and he shall be entitled to the same amount as compensation for collecting licenses due the County, which amount he may deduct from the payment made by him to the County Treasurer, but he shall not be allowed any commission on any money not remitted by him within ten days from the end of the month.* * *

As the Probate Judge should collect the license, and there is expressed authority for the Probate Judge to be allowed a percentage on the money collected for licenses due the State, it is my opinion that the Probate Judge is entitled to receive a commission of two and one-half per cent on the entire twenty-five dollars collected for a State license under Schedule 10 of the 1935 Revenue Act.

Answering your second question, it is my opinion that the Alabama Bar Association is entitled to receive ten dollars out of each twenty-five dollars collected by the Judge of Probate under Schedule 10 of the 1935 Revenue Law. The language used by the Legislature is very plain and is not ambiguous in any respect. I call your attention to the following:

> "Ten Dollars of the license herein levied together with the fees paid by applicants, as otherwise provided by law, shall remain in the State Treasury and shall constitute a separate fund to be disbursed by the

State Treasurer on the order of the Board of Commissioners of the Alabama State Bar Association."

I do not see how the Legislature could have expressed its intention in any plainer words or with more forcible language than as expressed above. In my opinion the only possible construction that could be placed on the words used in the statute is that the Bar Association is entitled to ten dollars and not ten dollars less the cost of collecting the money. If the Legislature had intended for the costs to come out of the amount given to the Bar Association, it is my opinion that the statute would have read ten dollars less all the costs and charges of collecting said money.

In the case of State v. Lamar, 178 Ala. 77, 59 So. 473, the Supreme Court of Alabama said:

> **"The Court cannot, on its own notion of what the Legislature** intended to do, or ought to have done, disassociated from the language employed, undertake to cure the inanities of the statute. **The plain and sound principle is to declare it a lex scripta est,** although so understood the statute leads to absurd and mischievous results, or to consequences not contemplated by the Legislature; for Courts are not to inquire as to the motive of the Legislature, nor to depart from a meaning clearly conveyed, in unambiguous words, because the statute as literally understood, appears to lead to unwise consequences, or to contravene a sound public policy."

In the case of Blake v. State, 59 So. 623, the Supreme Court of Alabama said:

> "Where the language of a statute is plain and unequivocal, and its application definite and certain, courts will not search for unexpressed intentions, nor indulge in speculations as to the possible or probable qualification that might have been in the mind of the Legislature."

It is my opinion that it was the expressed intention of the Legislature to give the Alabama State Bar Association ten dollars out of each license collected under Schedule 10 of the 1935 Act.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 2, 1935.

Hon. Will O. Walton,
Senator, Ninth District,
LaFayette, Alabama.

Licenses:

1. The taking out of liceense under paragraph B of Schedule 104 authorizes the peddling only of medicine or other articles of like character.

2. A person using a motor vehicle is in addition to the license required by Schedule 104, Paragraph B liable for the license levied by Schedule 146.

3. If such medicine peddler sells other articles, and used vehicles other than motor vehicle, he is liable for license levied by Schedule 146.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"I shall thank you to give me an official opinion on the following matters:

"1. What annual license do agents of The W. T. Rawleigh Company and the Wadkins Company pay the State and County under the new Revenue Bill? In explanation of the above question, I know that subsection (b) under Schedule 104 of the Revenue Bill passed by the recent Legislature intended to cover this particular class of vendors. However, I am informed that the State Tax Commission is ruling that these parties come under the 'Rolling Store Schedule.'

"I shall thank you to let me have this opinion at your earliest convenience, as there are many people inquiring of me concerning this particular matter."

In reply, I advise sub-paragraph B of Schedule 104 to which you refer provides:

"(b) Each itinerant vendor or peddler of medicine or other articles of like character shall pay an annual license of fifty dollars ($50.00) to the State and Fifty Dollars ($50.00) to each county in which they do business. **Provided that the payment of the license under this Schedule shows no authority for engaging in any business for which a higher license is in this Act required without the payment of a higher license.** (Emphasis ours.)

Schedule 146 provides in part as follows:

"Schedule 146. Each person traveling on an animal or using a vehicle other than a motor vehicle, doing business as a transient vendor or peddler as defined in this Schedule, displaying, selling or offering to sell any goods, wares or merchandise, other than to a merchant for resale, shall pay a privilege license to the State of Fifteen Dollars ($15.00) and Five Dollars ($5.00) for the county in each county in which such transient vendor or peddler does business for each vehicle. Each person using a motor vehicle, doing business as a transient vendor or peddler as defined in this schedule **displaying, selling or offering to sell any goods, wares or merchandise of whatever nature, at retail** shall pay to the State in order to engage in such business the following privilege licenses: Then follows the graduated scale on those using motor vehicles.

It will be seen that the language "goods, wares or merchandise of **whatever nature**" embraces those things included within Schedule 104, sub-paragraph B. This accompanied by the declartion contained in said paragraph B, that the payment of the license thereunder does not authorize engaging in any business for which a higher license is required seems to me to be definite indication of legislative intent, and if one be a transient peddler using a motor vehicle, he is liable for the license levied by Schedule 146. If such transient peddler or vendor also sells medicines he is liable for the additional license levied by Schedule 104.

If such person travels on foot, he is not liable for any license under Schedule 146, but if he is a peddler of medicine he would be liable under Schedule 104.

If such peddler uses a vehicle other than a motor vehicle, he would be liable for only the peddlers of medicine license, if his business is restricted to medicine "or other articles of like character"—the latter phrase being clearly used in a ejusdem generis sense, and he would not be due an additional license.

However, if he sells articles other than medicine or other articles of like character, he would be liable for the license levied by Schedule 145 on transient peddlers using a vehicle other than a motor vehicle.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 2, 1935.

Hon. W. W. Hill,
Judge of Probate,
Montgomery County,
Montgomery, Alabama.

Opinion of November 22, 1935 holding License Inspector entitled to penalty of 15% of licenses payable to Probate Judges held to be a general ruling for the guidance of all Probate Judges.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"I have just seen an opinion written by you, dated November 22, 1935, addressed to Hon. Henry Long, President of the State Tax Commission, the heading of which is "License Inspectors held entitled to penalty of 15% of license payable to the Probate Judges in cases of delinquency." The last paragraph of this opinion states "I therefore hold that the penalty of 15% collected by the Probate Judge in cases of delinquency is payable to the License Inspector."

"Please advise me whether the Probate Judge shall pay directly to the License Inspector this penalty, or does it go through the State authorities?

"I will thank you very much to give me an answer to this question at your very earliest convenience, so that I may govern myself in making up and paying over the money directly from this source, on or before the first of December 1935."

In reply I beg to enclose copy of opinion to Hon. Henry S. Long, dated November 22, 1935, to which you referred.

As you will note the next to the last paragraph of this opinion makes this statement.

"I therefore hold that the penalty of 15% collected by the Probate Judge in cases of delinquency is payable to the License Inspector."

This is a specific holding that you and the other Judges of Probate are authorized to pay to the License Inspector such penalty, and was intended to apply to them as fully as if directly addressed to them.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 3, 1935.

Hon. Harry Martin,
Clerk, Circuit Court,
Choctaw County,
Butler, Alabama.

Where the plaintiff obtains judgment against the defendant and an execution is returned against the defendant "no property found," the clerk may issue execution against the plaintiff only for the costs created by him in obtaining the judgment.

Where a case is appealed to the Supreme Court and is affirmed and an execution is returned against the defendant "no property found," the fact that a claim suit involving some of the property and growing out of the original suit is pending should not be any bar to collecting from the plaintiff that part of the costs created by him in obtaining his judgment in the original case.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of November 6, 1935, in which you request my opinion as follows:

"I am herewith enclosing all the proceedings had in the lower Court, and the Supreme Court. In the case of G. A. Owen vs. Brookville Lumber Co. A Corp., Charlie Lee, T. A. Cooper, W. B. Phillips and O. P. Phillips, which explains itself. As soon as the Clerk of the Supreme Court certified this case back to this office I issued execution against the defendants for the judgment and the cost in the lower court, the sheriff returned the execution with the notation "No Property found." I then issued execution against the plaintiff, for the cost created in the lower Court. This execution is now in the hands of the sheriff, but is being held in his office because of the fact that the attorney for the plaintiff contends that a certain claim suit growing out of this case should be determined before the plaintiff would be liable for his cost.

"You will notice in the opinion of the Supreme Court what they have to say with reference to the claim suit. I would like for you to give me an opinion as to whether it is proper, legal and right for the sheriff to proceed to collect the plaintiff's cost from the plaintiff in said cause."

I note you say on the case being affirmed you issued execution against the defendants for the costs and judgment and that the execution was returned by the sheriff "no property found," and that you then issued execution against the plaintiff for the costs created in the lower court. In this you were wrong. The law provides that on return of execution against the defendant "no property found" the clerk may issue execution against the plaintiff,

not for all the costs, but only for the costs created by the plaintiff in obtaining his judgment. See Section 7805, Code of Alabama, 1923, which is as follows:

"When against plaintiff for his costs.—When execution against the defendant is returned 'no property found,' execution may issue against the plaintiff, in the name of the Clerk or the register of the court, for all the costs created by him in obtaining his judgment."

Shackleford vs. State, 204 Ala. 362;

Biennial Report of the Attorney General, 1922-24, page 84.

As to whether or not it is proper, legal, and right for the sheriff to proceed to collect from the plaintiff the amount of the costs created by the plaintiff in securing his judgment, before the determination of a claim suit growing out of the original case. I know of no law that would keep the sheriff from collecting the costs created by the plaintiff in securing his judgment in the original case, even though a claim suit growing out of the original case is still pending. The proceeding in the original case is now complete, has been passed on by our court of last resort and execution should issue against the plaintiff for the costs created by him. The fact that a claim suit involving some of the property and growing out of the original case is pending should not be any bar to collecting from the plaintiff that part of the costs created by him in obtaining his judgment in the original case, when execution for the costs has been issued against the defendant and returned "no property found."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 3, 1935.

Hon. D. D. Jayne,
Chairman, Board of Registrars,
Bay Minette, Baldwin County, Ala.

Elections—Registration of voters may be had only at times specified by law. General registration is governed by Section 375, Code of 1923, as amended by Acts 1927, p. 274. Special registration is governed by Section 376, Code of 1923, as amended by Acts 1932, p. 67.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of October 30, 1935, in which you request my opinion as to whether or not the courts of county commissioners have authority to order or direct additional days to complete the registration other than those provided by law.

I am of the opinion that your inquiry should be answered in the negative.

The regular registration is governed by Section 375 of the Code of 1923, as amended by Acts 1927 p. 274.

The special registration is governed by Section 376 of the Code of 1923, as amended by Acts 1932, p. 67.

There is no authority of law for registration of voters other than that provided in the two above cited Code sections as amended.—**Biennial Report of Attorney General, 1932-1934. pp. 443 and 467.**

For your information, I am herewith enclosing copy of opinion rendered to the State Comptroller on October 13, 1934, which construed an Act approved October 4, 1932 (Acts 1932, p. 67), dealing with special registration.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 3, 1935.

Hon. Frank M. Johnson,
Judge of Probate,
Winston County,
Double Springs, Ala.

Licenses:

No authority to issue license to a rolling store to sell tobacco products.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"In Schedule 32 of the Revenue Bill there is no provision made directly for the amount to be charged rolling stores for privilege to sell tobacco products. But in a booklet compiled by Harry Simon, Chief Clerk, License Department, State Tax Commission, and in his letter of October 8th to all probate judges, he asks that we charge a state license of $15.00, county license of $7.50 and fee of 50 cents, for that privilege.

"A Mr. Mohan, of Haleyville, Alabama, who has a license to operate a rolling store in this county, came to the office yesterday and offered me $3.50 for the privilege to sell tobacco products. I told him I could not issue a license for that amount, as I had had instruction from the State Tax Commission to charge the $23.00.

"Will you please give me your opinion as to the amount of license to charge him? Mr. Simon has his own rule to charge $23.00 and the Bill as passed calls for only $3.50 for retail dealers in tobacco products in this county. It seems to me that Mr. Mohan can not be made to pay the $23.00 license but what am I to do about it?"

In reply, I beg to advise that in my opinion there is no authority for issuing a license to sell tobacco to a rolling store. Section 350 of the Revenue Act of 1935 provides in part that the license shall be issued which "shall set forth and specify the name of the person, firm or corporation applying therefor, the business or act which it is proposed to carry on or do thereunder, the name of the street or location where it is proposed to carry on the same if such location shall be in a city or town and have a street number. * * * and such license shall not be transferable except as otherwise provided herein, nor shall it entitle the holder thereof to carry on any other business or do any other act than that named therein."

There is a provision next following, providing for the transfer of a license from one location to another. It is clear I think, that proviso contemplates the issuance of a license for a fixed place of business. A rolling store necessarily has no fixed place of business and the license would therefore, not be issuable to authorize it to sell one of the products for which a special license is required and which is required to be sold at a fixed location.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 3, 1935.

Hon. J. S. Sandlin, Sheriff,
Morgan County,
Decatur, Alabama.

Statutes—

Acts Nos. 340 and 341 construed and held not violative of subdivision 24 of Section 104 of the Constitution.

Sheriffs—Deputy Sheriff not such public officer as contemplated by constitutional provisions prohibiting decrease or increase of compensation.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion dated October 24, 1935 as follows:

"I am inclosing you copies of two local bills which were passed at the recent session of the Legislature.

"Will you please give me your opinion as to whether or not they are constitutional. I am particularly interested in whether or not they violate Section 104 paragraph 24 of the Constitution of Alabama and Section 10188 of the Code of 1923.

"I have made demand on the County Commissioners for payment under these two bills and their attorney advised me that they were unconstitutional under the above sections."

Act No. 340, a copy of which is attached to your request, purports to fix the compensation of the Chief Deputy Sheriff of the County who is appointed by the Sheriff as per the mandate of Section 10188 of the Code of 1923; and Act No. 341 purports to allow the Sheriff of Morgan County an additional Deputy Sheriff and to fix his compensation.

In my opinion neither Act is violative of subsection 24 of Section 104 of the Constitution.

Of course, Act No. 340 changes the method of fixing the compensation of the Chief Deputy Sheriff of Morgan County from that provided generally by Section 10188 of the Code of 1923, but this Code Section can have no effect upon the constitutional validity vel non of the Act. There is no constitutional requirement that salaries of officers be uniform in all of the counties of the State.

The Chief Deputy Sheriff is an "officer" of his county, (Andrews v. State, 78 Ala. 483, Pentecost v. State, 107 Ala. 81, 18 So. 146) but he is not such officer as is within the contemplation of Sections 68 and 281 of the Constitution, which prohibit decrease or increase of officers' compensation during their tenure, and of Section 104, which limits the enactment of local legislation. Biennial Report of Attorney General 1932-1934, page 281, State v. Sanders, 187 Ala. 79, 65 So. 378.—Biennial Report of Attorney General 1930-32, page 342.

It is therefore my opinion that neither of the Acts is violative of these constitutional provisions.

This opinion assumes that the requirements of Section 106 have been complied with in the enactment of these statutes; and construes the Act merely with reference to its alleged conflict with subsection 24 of Section 104 of the Constitution.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 3, 1935.

Dr. J. A. Keller,
Superintendent of Education,
Montgomery, Alabama.

1. In the event of insufficiency of funds to pay all State appropriations, payment of appropriations for educational purposes is subject to the methods of proration provided in the Budget and Financial Control Act as construed by the Supreme Court.

2. Act No. 151, approved June 27, 1935, is unconstitutional as violative of Sections 42 and 43 of the Constitution.

3. The actual amount of money for use under the Minimum Program Act, Act No. 295, approved September 2, 1935, must be determined by the proper operation of the Budget and Financial Control Act, as construed by the Court, as applied to available appropriations, funds and facts as they exist at a given time.

Opinion by the Attorney General.

Dear Sir:

I acknowledge receipt of your letter of October 12, 1935, which is as follows:

"Will you please give me at your earliest convenience your opinion on the following questions:

"1. If the revenues available during any year are not sufficient to pay the appropriations and expenses of government in full during that year, and if proration must be resorted to under the budget act, what procedure will be used in prorating the appropriations made by the Legislature for the public schools, colleges, crippled children, and other educational services?

"2. What effect, if any, does the Tucker Act (Act No. 151, approved June 27, 1935) have on the proration and payment of appropriations made

by the Legislature for the public schools, colleges, crippled children, and other educational services, and on the uses to which the funds from such proration should be applied?

"3. If the appropriations for the public schools cannot be paid in full, to what extent will the Minimum Program Act (Act No. 295, approved September 2, 1935) determine how the funds available for the schools are to be apportioned and used?

"4. Does the Tucker Act (Act No. 151, approved June 27, 1935) offend any section of the Constitution?"

With reference to your **question number 1.**

Inasmuch as this question is hypothetical, in that it is not made to appear that there is a present and actual insufficiency of funds to pay the expenses of the government, and of a very general nature, I shall endeavor to answer it only in general terms, conceiving as I do that no really constructive end could be served by indulging here in detailed speculation regarding the myriad of contingencies which future developments might produce. Without reference, therefore, to any particular fund, constitutional or otherwise, devoted by law to specific purposes, and subject to such change as the particular facts in a given instance might properly involve, it appears that, as a general proposition, the funds appropriated by the Legislature for the expenses and operation of the public schools, colleges, crippled children, and other educational services, in the event of inadequacy of funds to pay all appropriations in full, should be prorated in the manner contemplated and provided by the Budget and Financial Control Act (Acts 1932, p. 35) as construed by our Supreme Court.

In this connection, I call your attention to the detailed treatment of the effect of this Act given by the Special Court in Abramson v. Hard, 229 Ala. 3, 155, So. 590, wherein among other things, it was said:

"Again there are appropriations made pursuant to constitutional requirement which just as manifestly were not intended to be, **and which in fact could not be, prorated,** but the full amount of which, by express constitutional provision, must be appropriated by the legislature to the purposes in the Constitution. * * *

"It is further manifest from such sections that the only appropriations required to be allotted are appropriations for the administration, operation and maintenance of any department, institution, bureau, board, commission or other state agency, upon quarter requisition for the amount estimated to be necessary to carry on its work during the succeeding quarter. All other appropriations are therefore available without any allotment, and so far as the provisions of the act are concerned, may be paid in full. * * *

"It follows from what we have said above that the educational appropriations involved in this suit are entitled to a pro rata payment with the appropriations to all other departments, institutions * * * or other state agencies **other than appropriations that are definitely fixed in amount or are appropriated for the specific purpose of paying in full some governmental expense of the character hereinabove indicated, without discrimination between them."**

Your attention is directed to the body of this opinion for helpful indications regarding the nature and effect of more particular items of constitutional and departmental expenses. The particular facts relating to the character, origin or use of any particular fund or appropriation will very largely control at a given time the question of the extent or manner of the proration, if any, required by the provisions of the Budget and Financial Control Act. I also call your attention to the decision in In Re opinion of the Justices, 229 Ala. 98, 155 So. 699, regarding, among other things what are "public schools."

Answering your question numbered 2.

Act No. 151, approved June 27, 1935, contains but two sections here pertinent, and they are as follows:

"Section 1. The maintenance and operation of the public schools, secondary schools, normal schools, and institutions of higher learning in the State of Alabama, is hereby declared to be an essential function of State government of equal importance with the other essential functions of State government such as the legislative, executive and judicial departments; and the payment of the salaries of the teachers and administrative officers of said schools and institutions is as essential as the payment of the salary of any officer of the State.

"Section 2. In the administration of that certain Act known as the Budget and Financial Control Act, approved September 27, 1932, and of any other law of the State of Alabama, no discrimination in prorating, allotment, or payment of appropriations shall be made against any of said schools or institutions in favor of any other department, board, institution, commission, or other State agency, or in favor of any officer or agent of the State of Alabama, whether on a salary fixed by law or not. It being the purpose of this Act to establish, in the allotment, proration and/or payment of appropriations for the public schools and educational institutions of the State, identity and equality of treatment, and equal priority, with the other essential departments and officers of the State Government."

From a careful consideration of the complex issues involved in this question, I am impelled to the conclusion that the Act in question (No. 151) is unconstitutional as being an invasion by the legislature of the powers and duties conferred upon the judicial department of the State government by the Constitution of the State of Alabama. Constitution 1901, Secs. 42 and 43.

Neither the Courts nor State officials should hold in light esteem the solemn acts of the legislative department of our government. They should be accorded every indulgence and presumption commensurate with the requirements of the organic law in order to sustain them. It is equally as solemn a duty of this office, however, to give effect to the constitutional and decided law of this State as it exists—and free of personal equations.

Section 42 of the Constitution of 1901 provides:

"The powers of the government of the State of Alabama shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to-wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another."

And its companion provision, Section 43, provides:

"In the government of this state, except in the instances in this Constitution hereinafter expressly directed or permitted, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end that it may be a government of laws and not of men."

In commenting upon an earlier act of the legislature, in substantial effect similar to the act here in question, the Supreme Court of Alabama in Lindsay v. United States Savings & Loan Ass'n., 120 Ala. 156, said:

"In form and words, the enactment is not directed as a mandate to the courts, but it is without force or meaning, unless the courts depart from the former construction of the statute, and yield obedience to it. It is, of consequence, that which is known as an 'expository act.' Of such statutes it is said by Judge Cooley: 'As the legislature cannot set aside the construction of the law already applied by the courts to actual cases, **neither can it compel the courts for the future to adopt a particular construction of a law which the legislature permits to remain in force. To declare what the law is or has been is a judicial power:** to declare what the law shall be, is legislative. One of the fundamental principles of all our governments is that the legislative power shall be separate from the judicial. **If the legislature would prescribe a different rule for the future from that which the courts enforce, it must be done by statutes, and cannot be done by a mandate to the courts, which leaves the law unchanged, but seeks to compel the courts to construe and apply it not according to the judicial, but according to the legislative judgment."**

From a reading of this act, it is manifest that the legislature had in mind, among other things, the decision of the Special Court in Abramson v. Hard, supra, wherein in dealing with certain **educational appropriations**, and the effect thereon of the Constitution and the Budget and Financial Control Act, the Court said:

"Again there are appropriations made pursuant to constitutional requirements, which just as manifestly were not intended to be, and which in fact could not be, prorated, **but the full amount of which, by express constitutional provisions, must be appropriated by the legislature to the purposes specified in the Constitution.** Of this character are appropriations for the compensation of members of the legislature (Const. Sec. 49); The general school fund (Const. 260. Turnipseed v. Blan, 226 Ala. 549); interest on funds of the University of Alabama covered into the treasury (Const. 265); the compensation of registrars (Const. 186); and (At least after Oct. 1, 1935) the salaries of the Judges of the Supreme Court (Const. 150) and of the Governor and other executive officers (Const. 118)."

Then after dealing with other items of governmental expense, etc., which would have to be paid without proration, the Court concluded:

"It follows from what we have said above that the educational appropriations involved in this suit are entitled to a prorata payment with the appropriations to all other departments, institutions, bureaus, boards, commissions and other state agencies **other than appropriations that are**

definitely fixed in amount or are appropriated for the specific purpose of paying in full some governmental expense of the character hereinabove indicated, without any discrimination between them.

It will be observed that the act in question (No. 151) makes no appropriation of funds, it repeals no existing statute, and it does not purport to alter, repeal or amend the language or any particular provision of the Budget and Financial Control Act, but merely declares abstractly how the legislature thinks the general existing constitutional and statutory law should be construed as applied to appropriations of funds to the named educational institutions. A reading of the act leads to the inescapable conclusion that it was designed to overrule, to the extent there indicated, the decision of the court in Abramson v. Hard, supra. This is not within the power enjoyed by the legislature. Moreover, if, as held in effect in the Abramson Case, supra, the legislature could not, by the provisions of the Budget and Financial Control Act, directly reduce certain prior and constitutionally required expenditures to the general level of ordinary and voluntary expenses and thus compel absolute proration, then the legislature could not do indirectly that which it was prohibited from doing directly, that is, raise certain otherwise ordinary and voluntary expenses, however praiseworthy, to the more solemn position of prior and constitutionally required expense by legislative fiat. The effect of constitutional provisions is not thus dependent upon the will of the legislature.

Further, it is significant to note that every appropriation made to educational agencies or for educational purposes by the various separate acts of the same legislature which passed the act considered (No. 151), **was made expressly subject to all the terms, conditions, provisions and limitations of the Budget and Financial Control Act.** I refer to Section 5 of Act No. 309, approved September 2, 1935, Section 6 of Act No. 326, approved September 2, 1935, and Section XIX of Act No. 373, approved September 9, 1935. All of these acts, you will observe, were passed and approved over two months after the passage and approval of Act 151.

With reference to your question numbered 3.

What has been said above suffices to answer in part the general considerations here presented. The actual amount of money available for use under the Minimum Program Act at any given time, as indicated above, must be determined by the proper operation of the Budget and Financial Control Act and the Constitution as applied to available appropriations, funds and facts as they exist. When the actual funds thus ascertained in amount are available they must be used in the manner provided in the Minimum Program Act, Act No. 295, approved September 2, 1935.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 3, 1935.

Hon. W. W. Hill,
Judge of Probate,
Montgomery County,
Montgomery, Alabama.

Licenses and taxation—War Veterans exemption—Section 14 of Act No. 494, approved September 13, 1935, prescribing minimum property and

income tests as condition to eligibility for exemption from license taxes is valid.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion dated October 10, 1935 as follows:

"Mr. Wiley F. Bunn has made application for a license to run an automobile repair shop. Mr. Bunn has attached to his application a health certificate from Dr. J. L. Bowman, Health Officer for the City and County of Montgomery, certifying that Bunn is over 25% disabled. He has brought to this office an honorable discharge from the U. S. Army, to-wit No. 1882339, which discharge shows that he enlisted April 25, 1918, and was discharged February 19, 1919. He is a qualified elector and resides in the County of Montgomery, State of Alabama. In other words, he has complied with all the requirements of Senate Bill 348, except that he declines to furnish any certificate or evidence that he does not own both real and personal property of the value of $5,000.00 or more. He declines to furnish any certificate that his net annual income is less than $1,-200.00. He declines to make any certificate or produce any evidence under Section 14 of said Act. He offers to pay 50 cents for his license.

"I am asking the question, 'Have I the right to issue this Veteran this license on the payment of 50 cents, when he fails to make any certificate or give any evidence as to his worth or his net income as required in Section 14 of said Act.'

"The Attorney for Mr. Bunn insists that the license should be issued regardless of a compliance with Section 14, and he claims that it is not constitutional."

Your inquiry must be answered in the negative.

Section 14 of Act No. 494, approved September 13, 1935, provides:

"Section 14. Any veteran whose property both real and personal is valued at Five Thousand ($5,000.00) Dollars or more shall be precluded from the exemptions granted herein; nor shall a veteran whose net annual income is Twelve Hundred Dollars ($1,200.00) or more be entitled to the exemptions herein granted."

It is my opinion that the above quoted section violates no constitutional provision; and that it was within the legislative competency to base the limitation of the exemption upon concurrenece of the two factors; namely, physical disability of a specific degree and a limited estate or income.

In respect to the question of alleged discrimination in the exaction of license taxes imposed on public utilities by Acts of 1919, the Supreme Court said, in the case of Warrior Water Company vs. Long, 218 Ala. 125, 117 So. 658:

"General classifications may be subdivided into particular classes or reclassify members of a general class so long as there may be a substantial as distinguished from a fictitious basis for doing so."

The classification of those war veterans who are 25% or more disabled is further classified by separating from the general body of the veterans so

disabled those who have a limited income or a small estate. These classifications are not arbitrary, unreasonable and without foundation. They are, therefore, valid. Warrior Water Company vs. Long, supra. In Shepherd v. Sartain, 185 Ala. 439, 64 So. 57, the Supreme Court had under consideration subdivision 6 of Section 2061 of the Code of 1907, which was as follows:

"2061. The following property and persons shall be exempt from taxation:

6. From poll tax, all persons permanently disabled, whose taxable property does not exceed five hundred dollars."

The court there said:

"If the voter who exhibits the disability would excuse himself from the payment of any particular poll tax, he must assume the burden of showing its initiation before the tax became due, and that his taxable property did not exceed $500.00 at the time the tax became due. The ownership of less than that amount at other times during the year will not support the exemption, nor will the ownership of more than that amount at other times defeat it."

It is, therefore, my opinion that war veterans, although 25% or more disabled, are not entitled to the exemption provided by Act No. 494, unless they come within the limitations of Section 14 thereof, and make due proof of such facts.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 3, 1935.

Hon. Edgar Underwood,
Judge of Probate,
Russellville, Alabama.

Candidates for Solicitor must have met requirements of State Bar and be admitted to practice law in order to be eligible for election.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your request for opinion of November 5, 1935 as follows:

"Please render me an opinion on the following: A young man in this County contemplates being a candidate for Solicitor Law and Equity Court of this County in the election next year. He will not finish his law course at the University until next May. Will he be eligible to have his name on the ballot, or hold the office should he be elected?"

In reply, I wish to refer you to Section 167 of the Constitution of Alabama of 1901, which reads as follows:

"Sec. 167. A solicitor for each judicial circuit or other territorial subdivision prescribed by the legislature, shall be elected by the qualified electors of those counties in such circuit or other territorial subdivision in which such solicitor prosecutes criminal cases, and such solicitor shall be learned in the law, and shall at the time of his election and during his continuance in office, reside in a county (in the circuit) in which he

prosecutes criminal cases, or other territorial subdivisions for which he is selected, and his term of office shall be for four year, and he shall receive no other compensation than a salary, to be prescribed by law, which shall not be increased during the term for which he was elected; provided, that this article shall not operate to abridge the term of any solicitor now in office; and provided further, that the solicitors elected in the year nineteen hundred and four shall hold office for six years, and until their successors are elected and qualified; and, provided further, that the legislature may provide by law for the appointment by the governor or the election by the qualified electors of a county of a solicitor for any county."

You will observe that this section sets out the qualifications of a solicitor in part as being one "learned in the law."

This, in my judgment, should be interpreted to mean that at the time a candidate qualified for the place of Solicitor, he must have met the requirements of the law relative to admission to the bar of Alabama and must have been admitted to practice the legal profession.

Very truly yours,
A. A. CARMICHAEL,
Attorney General.

December 3, 1935.

Hon. John K. Watkins,
Solicitor 5th Judicial Circuit,
Lee County,
Opelika, Alabama.

Lottery—Gaming—"Chances" given on prizes or premiums by merchants when no consideration direct or indirect is taken for said chances held not to violate any provision of Alabama law.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter in which you quote a statement of facts, and upon which you request my opinion, as follows:

"Different modes of increasing trade are being used in our community and we would like to know if our idea is within the law.

"We are desirous of giving out tickets to our customers, who buy for cash and who pay on account. Probably we would take 25 cents as a unit and a customer buying that amount for cash at one time would get a chance at one or more premiums and a person paying 50 cents on account would get a chance at the same. There would be no direct charge for the chances but of course it will cost us money and yet our prices will be open and above board. No one will be forced to accept the chance and no one will get a chance unless he buys or makes payment. We will have a certain time at week-ends when we will draw a ticket out and announce the winner. In the event the winner is not present we will draw again the next week and add the additional premium intended for that week, and so on until the winner shall be present and call for the prize. Our plan suggests cash and merchandise. This is somewhat

like the "bank night" in use in many localities. Kindly let us know if we are within the law in making use of such a plan."

In reply, I wish to advise that in my opinion no provision of Alabama law is violated by the acts outlined in the above statement of facts. I am assuming, of course, that no consideration direct or indirect is given for the chance at one or more premiums as referred to above. As stated in the statement of the facts set out above, I assume that the prize or premium given is purely a gratis proposition, and that no one is compelled to pay for the "chance" on the prize or to take the "chance" unless he so desires.

I refer you to the case of Yellow-Stone Kit v. State reported in 88 Ala. at 196, in which the court said as follows:

"It may be safely asserted as the result of the adjudged cases, **that the species of lottery, the carrying on of which is intended to be prohibited as criminal by the various laws of this country, embraces only schemes in which a valuable consideration of some kind is paid, directly or indirectly, for the chance to draw a prize.**—United States v. Olney, 1 Deady, 461; S. C., 1 Abbott, U. S. (C. O.) 275; Governor v. American Art Union, 7 N. Y. 228; Ehrgott v. Mayor, 96 N. Y. 264; 48 Amer. Rep. 622 Bell v. State, 5 Sneed (Tenn.) 507; Com. v. Thacher, 97 Mass. 583.

"There is no law which prohibits the gratuitous distribution of one's property by lot or chance. If the distribution is a pure gift or bounty, and not in name or pretense merely, which is designed to evade the law—if it be entirely unsupported by any valuable consideration moving from the taker—there is nothing in this mode of conferring it which is violative of the policy of our statutes condemning lotteries, or gaming. We may go further, and say, that there would seem to be nothing contrary to public policy, or per se morally wrong, in the determination of rights by lot. A member of the college of Christian Apostles, so sacred history informs us, was once chosen by lot. And under the law of this State a tie vote on a contested election of any State officer is required to be settled in the same mode. So, our statutes authorize a distribution of property owned by joint tenants to be made by lot, under the direction of the judge of probate.

"These are not the evils against which the law is directed. The gratuitous distribution of money or property by lot has never prevailed to such extent as to require police regulation at the hands of the State, nor, so long as human nature remains as it now is, and has been for so many thousand years, is it likely ever to be otherwise. The history of lotteries for the past three centuries in England, and for nearly a hundred years in America, shows that they have been schemes for the distribution of money or property by lot, in which chances were sold for money, either directly or through some cunning device. The evil following from them has been the cultivation of the gambling spirit—the hazarding of money with the hope by chance of obtaining a larger sum, often stimulating an inordinate love of gain, arousing the most violent passions of one's baser nature, sometimes tempting the gambler to risk all he possesses on the turn of a single card, or cast of a single die, and 'tending as centuries of human experience now fully attest, to mendicancy and idleness on the one hand, and moral profligacy and debauchery on the other.'—Johnson v. State, 83 Ala. 65. It is in the light of these facts and the mischief thus intended to be remedied, that we

must construe our statutory and constitutional prohibitions against lotteries, and devices in the nature of lotteries.—Ehrgott v. Mayor, 48 Amer. Rep. 622.

"The cases on this subject are very numerous, and while the courts have shown a general disposition to bring within the term 'lottery' every species of gaming, involving a distribution of prizes by lot or chance, and which comes within the mischief to be remedied—regarding always the substance and not the semblances of things, so as to prevent evasions of the law—we find no decision in which the **element of a valuable consideration parted with, directly or indirectly, by the purchaser of a chance, does not enter into the transaction.** Buckalow v. State, 62 Ala. 354; The State v. Bryant, 74 N. C. 207; Com. v. Wright, 50 Amer. Rep. 306; State v. Clark, 66 Amer. Dec. 723; State v. Shorts, 90 Amer. Dec. 668; Wilkerson v. Gill, 30 Amer. Rep. 264; Governor v. Amer. Art Union, 7 N. Y. 228; State v. Mumford, 75 So. 747; Hull v. Ruggles 56 N. Y. 424; Thomas v. People, 59 Ind. 160; Dunn v. People, 40 Ill. 465; Seidenbonder v. Charles, 8 Amer. Dec. 652; United States v. Olney, 1 Deady, 461; Bell v. State, 5 Sneed, 507; Bishop on Stat. Crimes, (2nd Ed) Sec. 952; 2 Whart. Sr. Law (9th Ed.), Sec. 1491." (Emphasis supplied).

The three necessary elements of a lottery have been defined in the Federal case of Brooklyn Daily Eagle v. Voorhies (C. C. N. Y. 1910) 181 Fed. 579, as follows:

"Three necessary elements of a lottery are the furnishing of a consideration, the offering of a prize, and the distribution of the prize by chance rather than entirely upon a basis of merit."

And it will be seen from the state of facts furnished me by you that the element of consideration is entirely lacking in the instant case. I am, therefore, of the opinion that you are "within the law in making use of such a plan."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 3, 1935.

Hon. Frank M. Johnson,
Judge of Probate,
Winston County,
Double Springs, Ala.

Licenses:

Transient dealers of bakery products in counties other than where plant is located required to take out one State license of $20.00 and a county license of $8.00 in each county where such transient dealer does business.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of November 12th, in which you state:

"Under Schedule 147, (k) it is provided that a transient dealer of bakery products is due a privilege license as follows: an annual State

license of $20.00 in addition thereto five dollars in each county in which he does business.

"'A' has a bakery in Franklin County and is doing business in several counties as transient dealer, he pays the State $20.00 in one county and comes into Winston County, is he due another $20.00 in Winston, or is he only due the County license of $5.00?

"Please give us your opinion on this matter at an early date."

In reply, I beg to advise that Schedule 147 provides in part as follows:

"Each person doing business as a transient dealer as defined in this Schedule and who does not pay the privilege license under Schedule 33, or the license permit under Schedule 159.16 shall pay an annual license tax to the State of $30.00. The payment of one State license shall authorize such transient dealer to engage in such business in any county in the State upon the payment of a county license of five ($5.00) dollars in each such county."

It is patent from the foregoing that as to the general transient dealer's license there is only one State license required. With refernce to transient dealers of bakery products, the statute provides:

"Provided the transient dealers of bakery products or soft drinks engaging in the business of transient dealer in any other county shall pay an annual State license of $20.00 and in addition thereto $5.00 to each county in which such transient dealer does business as such."

While this language is not as clear as that contained in the opening paragraph, I am of the opinion that the two provisions should read in pari materia and that only one State license is required in both cases. I therefore hold that transient dealers of bakery products operating in counties other than where the bakery is located are liable for one State license of $20.00 and in addition thereto, must pay a license of $5.00 to each county in which he does business.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 3, 1935.

Hon. W. W. Hill,
Judge of Probate,
Montgomery County,
Montgomery, Ala.

Under House Bill No. 1048—McDermott, approved Sept. 13, 1935, the Probate Judge should deduct the commission allowed the Land Agent as authorized in said Act.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of October 10th in which you state:

"An act of the Legislature No. 440 and No. 1048—McDermott, authorizing the Governor to appoint a Land Commissioner and pay him a commission of 10% of such rent, sale or redemption was passed at the

last session of the Legislature. Under date of October 10, 1935, we are notified by Henry S. Long, State Land Commissioner, of the appointment of such agent in compliance with this bill. The question that we are asking you to clear up, is, 'Does this office deduct the 10% and pay the same direct to the agent?' If so, what redemptions does the agent receive 10% on? Does he receive this 10% on all redemptions made by this office from the date of his appointment, on October 9, 1935, including sales made in August and September of 1935, and bought in by the State?"

In reply I beg to advise that Sections 1 and 2 of the Act referred to by you provide:

"Section 1. The State Land Commissioner, with the approval of the Governor, may contract with some person or firm in each county of this State to investigate sales of real property for terms and bid in for the State, to notify parties at interest in such real estate of such sales, to secure redemptions of said property, to secure sale at private sale by the State.

"Section 2. For such services rendered under the preceding section, the State Land Commissioner may allow fair compensation, to be fixed in the contract, which shall not exceed 10% of the proceeds of such rent, sale or redemption, and shall be paid from the funds so received."

The statute is silent as to how the compensation shall be paid, but it does provide that it shall be paid from the funds so received. As a Judge of Probate receives moneys paid in on redemption, presumably he should pay the Land Agent the commission before remitting.

The land Agent is entitled to his commissions only in those cases where he investigates the sale, notifies the parties and secures the redemption.

I presume that he will file sufficient evidence in each case for you to determine whether such redemption was brought about through his efforts.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 3, 1935.

Hon. B. B. Boisclair,
Bibb County Farm Bureau,
Centerville, Alabama.

Counties—cannot appropriate gasoline tax funds in aid of Farm Demonstration Extension Service.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of November 19, 1935, which reads in part as follows:

"The Bibb County Farm Bureau is desirous of assisting The County Board of Revenue in taking advantage of the Extension Service 'Four-way Plan.'

"The situation which confronts the County Board is as follows:

"The County funds are budgeted according to the estimated receipts of the County. Included in this budget is the sum of $1200.00 for County Agency Work.

"The 'Four-Way Plan', as you doubtless know, calls for a County donation of $2000.00. Would it be legal and permissible for the County Board to transfer this $1200.00 plus $200.00 from each of the four districts' gasoline fund, to the fund needed to secure the Extension Service grant?"

I am of the opinion that your inquiry should be answered in the negative.

The use of the county's share of the gasoline tax received from the State is now governed by Schedules 156.9 and 156.11 of the Revenue Act of 1935.—**Opinion of the Attorney General to Representative of Choctaw County on November 19, 1935; Opinion of the Attorney General to the Judge of Probate of Winston County on October 3, 1935.**

Schedule 156.9 of the Revenue Act of 1935, imposes a two cents tax, one cent of which is equally divided among the sixty-seven counties of the State. The use of the proceeds of the one cent tax by the county is as follows:

"Such funds when received by the County Treasurer shall be covered into the county road and bridge fund, and shall be **expended exclusively in the construction, maintenance and repair of the public roads and bridges in such county.**" (Italics supplied).

Schedule 156.11 provides for the use of the one cent tax distributed to the sixty-seven counties in the following manner:

" * * * and said funds shall be used by the several counties of the State exclusively for the **construction, maintenance, supervision and policing of the public roads and bridges in the respective counties;** provided however, that the Board of Revenue or other such governing body of a county may direct the State Tax Commission to pay over to the State Highway Department such part of said funds as may be agreed upon by the Board of Revenue or such other governing body of any county, and the Governor of the State of Alabama, which said funds **are to be used in the construction and maintenance of roads in said county,** to be agreed upon by the Board of Revenue of such county, or such other governing body, and the Governor of the State of Alabama." (Italics supplied).

It will be seen from the above that the county's share of the gasoline fund cannot be used for the purpose under consideration.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 3, 1935.

Hon. L. W. Price,
Judge of Probate, Conecuh County,
Evergreen, Alabama.

1. Taxicabs must pay the license provided for in subparagraph (c), Schedule 158.3, Section 348, Chapter 6, Article 13 of the Revenue Act of 1935.

2. The amount of the license required for taxicabs in subparagraph (c) of Schedule 158.3, supra, is based on the weight of the motor vehicle used and not on the seating capacity of the vehicle.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of October 17, 1935, which follows:

"Please construe Schedule 158.3, page 330 Revenue Law of 1935, as to the following:

"A party here operates one and sometimes two taxicabs, that is ordinary cars which will seat four persons comfortably besides the driver. He does not travel any given route, but takes passengers anywhere they want to go and charges them as taxi cabs usually do.

"What should a person operating one or more taxicabs as outlined above pay for his license?"

Subparagraph (c), Schedule 158.3, Section 348, Chapter 6, Article 13 of the Revenue Act of 1935 as amended by Act No. 530, approved Sept. 14, 1935, reads:

"(c) For each motor vehicle operated as a part of a Taxicab, or similar system, the following license tax shall be charged: (a) For each automobile not exceeding 2500 pounds in weight, Eleven and 25/100 Dollars ($11.25); (b) For each automobile weighing over 2500 pounds, but not exceeding 3000 pounds in weight, Sixteen and 75/100 Dollars ($16.75); (c) For each automobile weighing in excess of 3000 pounds, but not exceeding 3500 pounds in weight, Nineteen and 25/100 ($19.25); (d) For each automobile weighing over 3500 pounds, but not exceeding 4000 pounds in weight, Twenty-six and 25/100 Dollars ($26.25); (e) For each automobile weighing in excess of 4000 pounds Thirty Dollars ($30.00).

You will note that in subparagraph (c) quoted above, provision is made for the license to be paid "for each motor vehicle operated as a part of a Taxicab, or similar system,".

In my opinion, the party described in your letter is operating a taxicab or taxicabs, and is liable for the license provided in subparagraph (c), Schedule 158.3, supra, which sets out the license to be paid on motor vehicles operating as taxicabs.

I call your attention to the fact that the license for taxicabs as provided by subparagraph (c) of Schedule 158.3, supra, is fixed by a graduated scale on the weight of the motor vehicle, and not on the seating capacity. Therefore, it is my opinion that the person described in your letter should pay the license provided by subparagraph (c) of Schedule 158.3, supra, the amount of the license to be determined by the weight of the vehicle or vehicles for which the license is sought, as provided in said Schedule.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December, 4, 1933.

Jefferson County Board of Education,
Office of the Superintendent,
Birmingham, Alabama.
Attention Mr. Raymond R. Thomason.

Jefferson County Board of Education—Under facts set out in letter of inquiry, held not authorized to pay claim described therein.

Opinion by Assistant Attorney General Garrett.

Gentlemen:

I have your letter of October 26, 1935, which follows:

"Please give me an opinion on the following:

"The Works Progress Administration is carrying on a project at Leeds, Alabama on the campus of the Leeds High School. During the course of the operation of this project it became necessary to do some blasting. It is alleged that in blasting the rock, several pieces struck the roof of the home of H. B. Poole and damaged it to the extent of $18.00. Claim was filed by Mr. Poole against the Works Progress Administration and the Works Progress Administration has asked that we pay the bill due to the fact that there is no provision set up under their program for the public liability. The project is under the supervision and control of the Works Progress Administration and the County Board of Education has no connection whatsoever other than being the sponsor of the project.

"Will you please advise if it will be legal for us to pay the claim for H. B. Poole in the amount of $18.00 in view of the fact that the damage to the roof was not caused by an employee of the Jefferson County Board of Education."

It is my opinion your inquiry as to whether or not it will be legal for the Jefferson County Board of Education to pay the claim referred to in your letter must be answered in the negative.

It seems from the facts stated in your letter that the claim described therein is not a proper one against the Jefferson County Board of Education, since the Jefferson County Board of Education was not the party that caused the alleged damage, even though we grant, for the sake of argument, that the Jefferson County Board of Education might in some instances be liable for the payment of a claim of such a nature.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 4, 1935.

Hon. L. W. Price,
Judge of Probate,
Conecuh County,
Evergreen, Ala.

License:

1. A party who has purchased a privilege license for operating a cleaning and pressing business, but who has not paid the additional li-

cense required for a dyeing business, is required to pay the license provided for the reception or collection of articles for dyeing, when the actual dyeing is done at some place other than at the place where the articles are received or collected.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of October 24, 1935, which follows:

"Please refer to Schedule 35, page 245, House Bill 324, Revenue Bill of 1935 and give me an opinion as follows:

"A party here has purchased a privilege license for operating a cleaning or pressing business. This party receives clothing and sends it off to be dyed. He does not dye himself. Since he has purchased a privilege license for his cleaning and pressing business, should he then be rerequired to pay a license for the reception or collection of articles to be sent to another place for dyeing."

From the facts stated in your letter, I gather that the party mentioned therein, who is engaged in a cleaning and pressing business, has paid the license provided for engaging in such a business as levied by Schedule 35, Section 348, Chapter 1, Article 13, of the Revenue Act of 1935. It seems that he has not paid the license levied for the purpose of engaging in the business of dyeing. However, you state that he receives or collects articles to be sent to another place for dyeing. Schedule 35, supra, provides, among other things, "that each place maintained or operated for the reception or collection of such articles and not at the location of such pressing, cleaning or dyeing plant paying a license as such shall pay a license of Five Dollars ($5.00)." Since the party mentioned in your letter has not paid the license provided in Schedule 35, supra, for a dyeing business as such, it is my opinion, therefore, that he should be required to pay a license of $5.00 for the reception or collection of articles which he sends to another place to be dyed, as provided by Schedule 35, supra.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 4, 1935.

Hon. Henry S. Long, President,
State Tax Commission,
Montgomery, Alabama.

Contract Carriers Not Required to Specify in Applications for Permits under an Act of the Legislature of Alabama approved October 28, 1932 (H. B. 113).

Opinion by Assistant Attorney General Knabe.

Dear Sir:

This is to acknowledge receipt of your letter of September 13, 1935, which is as follows:

"My contention is that clearly the intent of the 1932 Act was to open an avenue for the qualifications of two separate and distinct set of Motor

Carriers, one to operate specially as a Contract Carrier the other as a Common Carrier to meet two separate and distinct needs.

"The definition of a Common Carrier under this Act is set out in Section 1, Sub-division (C), page 6, of this Act.

"The definition of a Contract Carrier is set out in Section 1, Sub-division (b) page 6 of this Act.

"My contention is that to qualify as a Contract Carrier the applicant should show in his application for a Permit the specific contract, or contracts, and at the same time specify person or persons with whom the contract has been made or is to be made. This Permit when issued should confine his hauling to this specific contract or contracts for which said Permit is issued. This would not bar the operator from making other contracts, but would require another application and a new Permit for each contract made. As now being interpreted, a contract Carrier can do general hauling, for instance he could carry a load from Huntsville to Mobile and pick up a load in Mobile and deliver to any point on his return, or any other point, by making a verbal agreement, as a contract, to deliver certain goods for an agreed on price to any agreed on place.

"Under this interpretation of the law the Contract Carrier can do anything the Commin Carrier can do, and with the special exemption in favor of the Contract Carrier there is an inducement for any operator to qualify as a Contract Carrier.

"You will notice under exemption, Page 7, Section 3 of the 1932 Act, Contract Carriers with trucks weighing not over 4500 lbs. and carrying loads of not over 4500 lbs. are exempt from Mileage Tax and are not subject to any regulation of rates. This exemption further convinces me that there was a clear intent in the Act to set the Contract Carrier in a clearly defined field of operators.

"I find further in the Application for Permits, Section 7, Sub-division 4, page 8, is being flagrantly violated. This Section specifically sets out that in the application made to the Probate Judge a description of the route or territory where the applicant prefers to operate must be set out and defined.

"The applicant in some cases meets this requirement by saying, In Alabama, or anywhere, or on the Highway. This makes a "check up" of his mileage practically impossible.

"This is further convincing evidence that a Permit as a Contract Carrier, who is the beneficiary of the above named exemptions should be confined to a specific contract or contracts under his permits.

"I will appreciate an opinion on this, so the Probate Judges will have the same ruling all over the State."

You request my opinion as to whether or not contract carriers who propose to operate under an Act of the Legislature of Alabama approved October 28, 1932 (H. B. 113), hereinafter referred to as the 1932 Act, may be required to set forth in their applications for permits under such Act the specific contract or contracts pursuant to which they propose to operate.

I have carefully noted each and every section of the above Act and pertinent sections of the General Revenue Act, No. 194, of the Legislature of Alabama, Regular Session, 1935 transferring the duty of collecting taxes under the 1932 Act from the Alabama Public Service Commission to your Commission.

Section 16 of the 1932 Act reads as follows:

> "Section 16. It is hereby declared that the business of contract carriers is affected with a public interest; that the welfare of the public, and the preservation and maintenance of an adequate and efficient system of transportation for the public, and the integrity of the State's regulation of such system of transportation, require the regulation of contract carriers **to the extent herein provided.**" (Underscoring mine).

In view of the under scored portion of this Section, it is my opinion that the Legislature has limited the extent to which contract carriers may be regulated and that they may be regulated only to the extent clearly provided in the Act.

Section 7 and 8 of the 1932 Act set forth specifically all things that shall be shown in applications for permits and in the permits issued pursuant to such applications. These sections read as follows:

> Section 7. Each application for a permit shall show: 1. The name and post office address of the applicant; 2. Whether the applicant proposes to operate as a contract carrier or a common carrier. 3. The number and character of motor vehicles which the applicant proposes to operate, and with respect to each truck, the make, model, rated capacity, and whether fitted with pneumatic or solid tires; and with respect to each bus, the make, model, and seating capacity. 4. A description of the route or territory where the applicant proposes to operate.
>
> "Section 8. Each permit shall contain the data prescribed in the preceding section to be stated in each application, and in addition, there shall be stated the distinguishing plate numbers which shall be displayed upon each motor vehicle which the applicant is authorized to operate.

I find nothing in either of these sections or any other section of the 1932 Act which would authorize your Commission to require contract carriers to specify, in applying for permits, all contracts in accordance with which they propose to operate.

If such carriers were so required to specify all such contracts it would be necessary for them to obtain amended permits for contracts subsequently made and pay the prescribed fee of $10.00 for each such amended permit. I do not believe this burden upon a carrier's right to contract is authorized by the statute under consideration.

Sections 23, 24 and 25 of the 1932 Act and Schedule 158.22 of the General Revenue Act extend authority for the promulgation of necessary rules and regulations for the collection of mileage taxes and authorize your Commission to require the filing of such reports and the keeping of such records as may be found desirable for this purpose. However, these sections do not, in

my opinion, authorize any change in the requirements of Sections 7 and 8, supra, with respect to the information to be shown in the applications or permits.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 4, 1935.

Hon. G. H. Howard,
Probate Judge,
Elmore County,
Wetumpka, Alabama.

1. Where a person who was operating a business for which a license was required prior to October 1, and who has paid the license for such year prior to October 1, operates such business after October 1, 1935, and does not take out license therefor prior to November 1, 1935, such person is delinquent and is liable for the penalty of 15% for delinquency, together with interest at 6% from date of delinquency.

2. Where a person not in business prior to October 1, 1935 begins operation of a new business for which a license is required, license therefor must be procured before beginning such business.

3. A person who operated an automobile on the public roads of Alabama prior to October 1, 1935 and who had the proper license therefor and who operates such automobile on the public roads of Alabama subsequent to October 1, 1935, and who does not take out license therefor prior to November 15, such person is subject to the penalty of 15% for delinquency and interest at the rate of 6% from date of delinquency.

4. If such automobile is not operated on public roads of Alabama from October 1 prior to the date, such automobile is actually used on the public roads of Alabama such person is not delinquent and is not subject to the penalty for delinquency.

5. The 6% interest should be apportioned in the same manner the license is apportioned.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of October 23, 1935, in which you request my opinion as follows:

"Section 353 of the Revenue Code provides that where any license is delinquent the same is subject to a penalty of 15% of the amount of the license, together with interest at 6% from the date of delinquency.

"Please advise us if the Probate Judge must be notified by the License Inspector of the delinquency of the license before the 15% penalty is applicable. If not, how are we to determine the date of delinquency?

"To whom shall we pay the 15% penalty?

"Shall we distribute the 6% interest in the same proportion as the license?

"We shall appreciate your opinion as early as is convenient."

In reply to your first question, I advise that if a person is operating a business or occupation for which a license is required prior to October 1, for which proper license had been secured and such person continues the operation of such business or occupation subsequent to October 1, and does not take out license therefor prior to November 1, such person is subject to the 15% penalty for delinquency, together with interest at the rate of 6% per annum from the date of delinquency.

If a person begins a new business subsequent to October 1, he must take out license therefor if such business is one for which license is required before beginning said business.

In the case of using such term in a general sense, if a person operated on the public roads of Alabama an automobile prior to October 1, 1935, and had secured the proper license therefor and operates such automobile subsequent to October 1st and does not take out license therfor prior to November 15, 1935, then such person is subject to the penalty of 15% for delinquency, together with 6% interest from the date of delinquency. If a person does not actually operate an automobile on the public roads of Alabama at any time from October 1st on and actually takes out license before he begins such operation, then he is not delinquent and is not subject to the interest and penalty. See opinion to Henry S. Long, President State Tax Commission of October 30, 1935, a copy of which is hereto attached.

You further inquire if the License Inspector must notify you of such delinquency before you are required to collect the penalty.

Subdivision (c) of Section 353 of the Revenue Act of 1935 reads as follows:

> "(c) All licenses levied by this Act except as otherwise provided shall be due and payable as of October first of each year and shall be delinquent November first thereafter. Where any license issuable by the Probate Judge or Commissioner of License shall be delinquent, the same shall be subject to a penalty of 15 per cent of the amount of the license, which penalty must be collected by the Probate Judge or Commissioner of Licenses when the license is taken out together with interest at 6% from the date of delinquency."

Such provision makes the fact of delinquency rather than the report of the License Inspector the criterion for determining the payment of the penalty. As a matter of practical operation. I assume that License Inspectors will continue to report delinquents as in the past. However, the Probate Judge must by proof satisfactory to him determine the question of delinquency vel non. The nature and amount of such proof is necessarily a question for him to decide.

Answering your further question, it is my opinion that the 6% interest should be distributed in the same proportion as the license money is distributed between the State and County.

Answering your further question as to the payment of the 15% penalty, this matter is now under consideration and when an opinion is rendered, the same will be sent to you.

Yours very truly,
A. A. CARMICHAEL
Attorney General.

December 4, 1935.

Hon. Frank M. Johnson,
Judge of Probate,
Double Springs, Ala.

Under Act No. 379, approved September. 9, 1935, applicable to counties of population of 95,000, and under warrants heretofore issued to county officers or others, and payable out of the General Fund must be refunded in the particulars therein indicated unless at the time the act became effective on Oct. 1, 1935, there was sufficient funds on hand in the General fund to pay such warrants.

Opinion by Special Assistant Attorney General Bibb.

Dear Sir:

I wish to acknowledge receipt of your letter of September 18, 1935, which is as follows:

"We have in our office, from the Secretary of State, a copy of House Bill 191, approved September 9, 1935, dealing with the County funds.

"This Bill provides that no warrant should be issued without first having the Funds available in the Treasury to such warrants.

"We want your opinion as to whether or not this includes outstanding warrants issued to officers of the County, or others, which has no due date, but are payable out of General Funds of the County, when such Funds are available and not otherwise appropriated."

The general purpose of House Bill 191, Act No. 379, approved September 9, 1935, is indicated in Section 2, which provides, among other things, that the purpose of the Act is "to authorize the refunding of outstanding general obligations other than bonded indebtedness, so that the provisions of this act may be put into effective operation."

By Section 9 it is provided, among other things, that "it shall be the duty of all Boards of Revenue, County Commissioners and other like governing bodies of the counties, to refund all warrants, which are unpaid and past due at the time this act goes into effect, and for which there is no money available at that time."

By Section 10 it is provided, among other things, that the Board of Revenue, County Commissioners, or other like governing body, shall, by notice published as therein required, "call in for registration anew all warrants and certificates of indebtedness payable out of the general fund, other than bonds, which are past due and remain unpaid at the time this act becomes effective", and also that "it is the purpose of this act to provide that said old warrants or certificates shall be refunded and settlement made with the owner in cash if practicable, and if not then in refunding warrants, as early after the expiration of said six months after the act becomes effective as may be reasonably and fairly done."

By Section 19 it is provided that all laws, except local acts applying to single counties, conflicting with any of the provisions of the act are repealed.

By Section 20, it is provided that the act shall become effective on the 1st day of October, 1935.

Section 21 provides that the provisions of the act shall not apply to counties having a population of more than 95,000 according to the last or any subsequent Federal census.

In view of these provisions of the act, it is my opinion that warrants heretofore issued to officers of the county, or others, payable out of the General Fund, must be refunded as indicated by the provisions of the act, unless at the time the act went into operation there was sufficient funds on hand in the General Fund to pay such warrants.

See opinion to Frank M. Johnson Nov. 18, 1935.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 4, 1935.

Hon. W. E. Butler,
Judge of Probate,
Madison County,
Huntsville, Ala.

Madison County—Fees of Judge of Probate governed by Section 7285 of the Code of 1923 rather than by Act No. 322, Senate Bill 183 approved February 17, 1885, (Acts 1884-1885, p. 591).

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of October 22, 1935, in which you request my opinion as to whether or not the fees chargeable by the Judge of Probate of Madison County are governed by Section 7285 of the Code of 1923, or by Act No. 322, Senate Bill 183 approved February 17, 1885 (Acts 1884-1885, p. 591), which provides for the fees of the Judge of Probate of Madison County. In other words, was the Local Act in question repealed by the adoption of the Constitution of 1901 or any subsequent legislation.

it has been held that Section 96 of the Constitution and the Schedule attached to the Constitution following Section 287, does not necessarily repeal Local Acts of this character as the Constitution has a prospective rather than a retrospective application.—**Barnes v. State, ex rel.** Tate (ms.): **Opinion of the Attorney General to the State Comptroller on August 7, 1935.**

The question then presents itself as to whether or not the Act in question which regulates the fees of the Judge of Probate of Madison County, Alabama, was repealed by any subsequent legislation.

The rule in this respect is stated in the case of Shepherd et al. v. Clements, 224 Ala. 1, 141 So. 255, which is as follows:

"We recognize the rule that the presumption is a general act does not repeal a local statute, but, as has been well said, 'such presumption must give way to a plain manifestation of a different legislative intent.' The question is one of intention which may be made to appear by the subject- matter with which the general act is concerned, by the surrounding circumstances, by other legislation on the same subject, and the purpose to be accomplished. Thus, where the clear general intent of the

Legislature is to establish a uniform system throughout the state, the presumption must be that local acts are intended to be repealed—36 Cyc. 1089, 1090."

See also Isabell v. Shelby County, 10 Ala. App. 639, 65 South, 706.

In my opinion the Act in question was repealed by Section 3720 of the Code of Alabama of 1907, which provides for the fees of judges of probate in general. In my judgment, the Legislature intended to cover the whole field or subject-matter of the fees allowed to judges of probate, thus repealing by implication any local law in conflict therewith.—**Shephard et al. v. Clements,** supra. The saving clauses in Act of 1911, p. 154, which amended Section 3720 of the Code of 1907 and Section 7235 of the Code of 1923, which was the adoption of the 1911 Act as carried forward in the 1923 Code, does not alter the above. The saving clauses, "that no local law shall he repealed", contained in the above citations, was not contained in Section 3720 of the 1907 Code. The repeal of the 1885 Act in question as affects Madison County, had already been repealed and could not be revived by the 1911 Act or the 1923 Code section.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 4, 1935.

Hon. V. A. Spencer,
Tax Assessor,
Pickens County,
Carrollton, Alabama.

Tax Assessors—Property must be assessed, even though exempt.

Opinion by Assistant Attorney General Small.

Dear Sir:

Under date of October 25, 1935 you requested my opinion as follows;

"I will appreciate you giving me an opinion on the following matter as early as it is convenient to do so.

"Under the new 1935 Revenue Acts certain personal property is exempt from taxation which has previously been taxable. When a person comes in to make his assessment and has no property except that which is exempt from taxes, should an assessment be made up and signed showing it to be exempt or is it necessary to make up an assessment at all?

"Of course, as I understand it, no property is exempt unless a return is made within the time required by law, but on the other hand it all becomes taxable and in addition carries with it a 10% penalty. If no assessment is made up for the property which is exempt the question arises as to how it would be determined whether or not a person had been in and offered to return his property for taxation within the time required for making assessments."

In reply, I refer you to pages 26 and 27, Sections 31 and 33 of the Revenue Act of 1935 (House Bill 324), which read in part respectively as follows:

SECTION 31. It is the duty of every person in every election precinct to attend in person before the Assessor on the first day of the appointment in the precinct of the taxpayer's residence, and then and there render to the Assessor under oath a full and complete list of all property of which he was owner, or in which he had any interest whatever, or of which he was trustee or agent on the first day of October of that year, and to enter upon such paper the amount of fire insurance carried upon any of the property so listed. * * * "

"SECTION 33. *** Provided that all property claimed exempt from taxation under the provisions of this Act shall be listed with the Tax Assessor by the taxpayer and entered on his return showing the items of property sought to be exempted and provided further that no property omitted from said return shall be exempted."

In my opinion, the provisions of these two sections require that an assessment must be made up and signed, even though the only property assessed is exempt from taxation.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 5, 1935.

Hon. J. R. White, Chairman,
Board of Revenue, Walker County,
Jasper, Alabama.

Board of Revenue of Walker County cannot purchase automobiles for its members, or furnish members county gasoline for their private cars used for official business.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of October 24, 1935, in which you state:

"I desire an opinion from you stating whether or not the members of the Board of Revenue of Walker County are permitted to buy cars to be used in the performances of their duties. A local act recently passed by the Legislature plainly sets out the duties and compensation of the Board. I am taking this stand as Chairman of the Board of Revenue that we are without authority to furnish cars to the different members of the Board of Revenue.

"Can they use gasoline belonging to the County in their private cars when on duty for the county?"

I have carefully examined Act No. 332, Senate Bill No. 187, approved July 31, 1935 (Acts 1935), which act established the Board of Revenue for Walker County, and I have been unable to find any authority for the Board of Revenue to furnish its members with automobiles, or to supply said members with gasoline belonging to the county for their private cars used on official business.

Biennial Report of Attorney General 1918-1920 p. 500;
Biennial Report of Attorney General 1918-1930, p. 205;
Biennial Report of Attorney General, 1932-1934, pp. 31, 434.

Public funds can never be expended unless there is expressed authority or authority necessarily implied.
Biennial Report of Attorney General, 1928-1930, pp. 826, 981.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 5, 1935.

Hon. D. M. Weakley, Superintendent,
Alabama Boys' Industrial School,
Birmingham, Alabama.

Probation officer for Alabama Boys' Industrial School allowed maximum of $3.00 per diem for expenses other than actual expense of transportation, when traveling in service of school.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of October 30, 1935, in which you state:

"I understand that there is a law that any public official on his traveling for the State is limited to expenses of Four ($4.00) Dollars per day.

"There are times when we have to send our probation officer into remote parts of the State, and even into other States to get boys who have run away from this School.

"Please advise me if this law applies to a situation of this kind.

"I shall appreciate an interpretation of this law, as to just how it applies to this School."

It is my opinion that your probation officer's maximum allowance for expenses, other than actual expense of transportation, while traveling for the school is $3.00 per diem. The per diem allowance is supposed to take care of all items of expense, except the actual cost of transportation.

As the Boys' Industrial School is a State Institution, its officers, agents or employees are entitled to receive only $3.00 per diem for expenses other than the actual expense of transportation when traveling in the service of the school.

I call your attention to Act No. 87 H. B. 6, approved March 23, 1933 (Acts 1933, p. 81), which is as follows:

"Section 1. The maximum amount allowable to persons traveling in the service of the State of Alabama or any of its agencies or institutions for expenses other than actual expense of transportation shall be $3.00 per diem.

"Section 2. This Act shall become effective upon its passage."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 5, 1935.

Hon. L. W. Price,
Judge of Probate,
Conecuh County,
Evergreen, Alabama.

Licenses—Licensing authorities unauthorized to license veterinary surgeon unless properly qualified under general law.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your letter of October 17, 1935 in which you request my opinion upon the following:

"Under Schedule 150, page 249, of the Revenue Bill of 1935, may a Judge of Probate issue a license to a person to practice veterinary surgery if that person is not a graduate of a veterinary school and has not been licensed to practice by any Veterinary Board. In other words, the party practicing is just an ordinary layman who has not had the theory but has been practicing the treatment of animals for a number of years."

Section 2 of an Act approved March 17, 1915, General Acts 1915, page 126, provides as follows:

"Section 2. Any person of good moral character, who has practiced veterinary medicine and surgery in the State of Alabama for a period of three years immediately preceding the passage of this Act, and, who shall present to the State Board of Veterinary Medical Examiners satisfactory evidence, thereof, shall be granted a permit to practice veterinary medicine and surgery in Alabama; provided, said person or persons meet the requirements of this Act, and pays his registration fee and annual dues as hereinafter provided. Said person or persons desiring the benefits derived from this Section must apply for said permit within six months after the appointment and organization of the said State Board of Veterinary Medical Examiners of Alabama."

I am assuming for the purposes of this opinion that the Veterinary Surgeon in question has not availed himself of the exemption hereinabove set out. Of course, any surgeon exempt under the above quoted section would not come within the scope of this Schedule.

The license required of those persons practicing "veterinary surgery" by Schedule 150 page 309, Revenue Bill of 1935 has nothing to do with the license or permit required by Chapter 3, Article 8, Sections 1249-1265, Code of Alabama 1923.

The above license schedule presupposes the issuance of licenses only to those who are legally entitled to engage in the practice of the profession in question.—Biennial Report of Attorney General 1930-1932, page 328.

In order to legally engage in the practice of veterinary medicine, the provisions of Chapter 3, Article 8, Sections 1249-1265, relative to being a graduate of a recognized veterinary school and the holding of a license or permit from the State Board of Veterinary Medical Examiners, must be complied with.

In an analogous situation involving the issuance of a municipal license to a chiropractor who had failed to obtain certificate of qualification from

the State Board of Medical Examiners, as required by law, the Alabama Court of Appeals speaking through Presiding Judge Bricken said:

> "In order to so qualify, the person desiring to engage in practicing the system of chiropractics must first obtain a certificate of qualification from the State Board of Medical Examiners (Section 3191, Code of 1923); and, until so qualified, the officers or authorities who have charge of issuing licenses have no authority to require of, or issue to, any person a license to practice the system of chiropractics in this state or any subdivision thereof. Where, in a schedule of licenses established by an ordinance passed by the competent authorities of a city, there is included an occupation which is prohibited by the general laws of the state, such ordinance, in so far as it licenses said unlawful occupation, is null and void. Hewlett v. Camp. 115 Ala. 499, 22 So. 137."
>
> Jackson vs. City of Sylacauga, 144 So. 125.

In view of the foregoing, therefore, it is my opinion that license should not issue to a practitioner of veterinary surgery until such party has complied with the requirements set out in Chapter 3, Article 8, Sections 1249-1265 of the Code.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 5, 1935.

Hon. Fred H. McDuff, Sheriff,
Jefferson County,
Birmingham, Alabama.

Machine which offers opportunity to secure "tempting" merchandise as well as "5c worth of candy" is prohibited by the statutes of Alabama.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of July 27, 1935, in which you request my opinion as follows:

> "There has been submitted to me a machine known as Mutoscope. Please advise me whether or not this machine is violative of our laws in regard to slot machines. Briefly, the machine has been described to me as being an erect apparatus with a slot where a nickel is deposited and for each and every nickel so deposited, the customer receives 5c worth of candy. In the upper part of said machine is a miniature crane to which is attached grappling hooks. The operator of the machine, by skillful manipulation of this crane, can in addition to his 5c worth of candy, obtain some other piece of merchandise. There are no checks or other monies that issue from this machine.
>
> I am enclosing herewith a circular with a picture of this machine thereon, together with copy of an opinion of the Supreme Court of New York, from which you can better understand this machine yourself."

I am of the opinion that the machine about which you inquire is prohibited by the statutes of Alabama.

In reading the circular which you enclose I note among the "20 Points of Superiority" set forth, the following:

"5. NEW CANDY "DISAPPEARING" CHUTE

Any candy not picked up by the player disappears into a trap that opens automatically as soon as the revolving front closes. This candy drops into a special tray where it is kept clean and **can be used over and over again.** Another exclusive "Mutoscope" feature that saves you money."

"8. LARGEST PREMIUMS IN THE INDUSTRY

Nothing is more attractive to the player than to see several **large, tempting** articles in the display. The new chute will deliver items larger than a lb. can of coffee with ease!"

Apparently the machine is to attract persons who have little or no interest in the candy (which apparently is "used over and over again" at great saving) but who hope to secure for a nickel one of the "large tempting" articles on display.

I believe this machine is prohibited by Section 1 of an Act of the Legislature, approved July 25, 1931 (1931 Acts at page 806) which provides as follows:

"DEFINITIONS.—That the term gambling device shall include and be deemed to embrace the following: (a) Any machine, mechanical device, contrivance, appliance or invention, whatever its name or character, in the use of which a consideration is paid or deposited, and there is gambling **or the hazarding of small amounts of money or property to win larger amounts of money or property.** (b) Any machine, mechanical device, contrivance, appliance or invention, whatever its name or character, which determines the result of winning or losing money or property by chance, lot or luck, in which neither the will nor skill of man can operate to influence the result of winning or losing. (c) Any machine, mechanical device, contrivance, appliance or invention, whatever its name or character, for the division of or distribution of either money or articles of personal property, where said distribution or division is to be determined by lot or chance amongst those who take shares or are interested in the scheme. (d) Any machine, mechanical device, contrivance, appliance or invention, whatever its name or character, which is operated or can be operated as a game of chance. (e) Any machine, mechanical device, contrivance, appliance or invention, whatever its name or character, where money or property is hazarded on chance, or risked on an uncertain event. (f) Any machine, mechanical device, contrivance, appliance or invention, whatever its name or character, into which money is placed or deposited upon chance or upon the result of the action of such machine, mechanical device, contrivance, appliance or invention. (g) Any machine, mechanical device, contrivance, appliance or invention, whatever its name or character, which dispeneses to the player or operator of the same any package of merchandise and also gives the player or operator the chance of placing himself in a position where his next succeeding play will assure him of a return of several times the value of the coin placed therein by him. (h) Any machine, mechanical device, contrivance, appliance, or invention, whatever its name or character, intended for the purpose of winning money or any other

thing by chance or hazard. (1) Any machine, mechanical device, contrivance, appliance or invention used or intended to be used as a substitute for, or in place of, any machine, mechanical device, contrivance, appliance or invention described and enumerated in paragraphs (a), (b), (c), (d), (e), (f), (g), and (h) of this Act. (Underscoring is ours).

Persons who use the machine about which you inquire are not buying candy, but are, in reality, paying a nickel for the opportunity to secure an article worth much more than a nickel. Further, according to the opinion of the Supreme Court of New York which you enclose, it is evidently customary for the manipulator to have the privilege of re-selling the merchandise acquired by him to the merchant in whose establishment the machine is located.

In the case of Howle v. City of Birmingham (159 So. 206) it was argued that device known as "Marblejax" was a game of skill. The Court, however, showed little sympathy for this viewpoint.

While the cases throughout the United States involve different types of machines, and while the laws vary in different States, it is interesting to note some of the recent decisions. In Sparks v. State (173 S. E. 216, Ga., 1934) a slot machine involving a marble game was held to be illegal "notwithstanding that the element of skill was involved."

In Kirk v. Morrison (146 So. 125, Fla., 1933) the Court said.

"A 'slot machine' is a gambling device where its construction is such that the player will receive something, but stands a chance to win something in addition." It "is a gambling device per se when it is so constructed that in its ordinary operation it combines the element of chance with the inducement of being able to receive something of value for nothing by means of playing according to directions."

In the words of Lang v. Merwin (78 Me. 486, 59 Atl. 1021):

"It is idle to assume or concede that the person putting his five cents into the machine may be doing so merely as a means or mode of buying a five cent cigar. It is idle to deny that the impelling motive is the hope of getting other cigars for nothing. If the machine did not afford that chance, it would not be used. True the cigar dealer sets up the machine to increase his trade and is recouped by that increase for any losses, so that in the end he loses nothing, but he does so by arousing and stimulating the gambling propensity, the very propensity the Legislature seeks to repress. The element of chance is the soul of the transaction."

In Commonwealth v. Theatre Advertising Company (190 NE 518, Mass., 1934) the game of "Beano" was declared illegal. In Einzig v. Los Angeles (32 p (2d) 1103, 138 Cal. App. 664) a similar game was declared illegal.

The general rule is well stated in the case of Boynton v. Ellis (57 F (2nd) who plays a slot machine stands to win or lose money, trade, or checks by hazard or chance, the machine is a gambling device'. 27 C. J. p. 989. at page 666) by the United States Circuit Court of Appeals as follows:

"The principle generally sustained by the Courts is that, 'where one Otherwise stated, it is that 'any slot machine will be deemed to be an unlawful gambling device, where the one who plays the machine stands to win or lose money, trade checks, or prizes, by a chance, or more broadly where there is an element of chance in its operation."

In the case of Moberly v. Dreskin (169 Mo. app. 672) the Court made the following comment on the varying types of machines:

"In no field of reprehensible endeaevor has the ingenuity of man been more exerted than in the invention of devices to comply with the letter, but to violate the spirit and thwart the beneficent objects and purpose of the laws designed to suppress the vice of gambling: Be it said to the credit of the expounders of the law that such fruits of inventive genius have been allowed by the Courts to accomplish no greater result than that of demonstrating the inaccuracy and insufficiency of some of the old definitions of gambling that were made before the advent of the era of greatly expanded, diversified and cunning mechanical inventions.

"The chief element of gambling is the chance or uncertainty of the hazard. It is not essential that one of the parties to the wager stands to lose. The chance taken by the player may be in winning at all on the throw or in the amount to be won or lost and the transaction should be denounced as gaming whenever the player hazards his money on the chance that he may receive in return money or property of greater value than he hazards."

The several cases cited do not, of course, bear directly on the instant case. However, they do tend to indicate the attitude of many of our courts.

I am of the opinion that the machine about which you inquire directly violates the section of the 1931 Act quoted supra.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 5, 1935.

Hon. J. H. Williams, Commissioner,
Building and Loan Department,
Capitol.

Building and Loan Associations—If an association in voluntary liquidation under Sections 35 of Acts 1931, p. 218, becomes insolvent, it should be placed into receivership under Section 16 of Acts 1931, p. 218.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of October 30, 1935, which is as follows:

"There is a Building and Loan Association under my supervision which is in voluntary liquidation as authorized by Section 35, (General Acts of the Legislature, 1931, page 233). Some legal and regulatory requirements were made by the Commissioner, which have been met. A recent examination of the affairs of the Association has developed an insolvent condition. The question arises as to whether or not the Association can legally continue to liquidate in a voluntary manner, or if its affairs should be placed in receivership, as authorized by Section 16 (General Acts, Regular Session 1931, page 225). I understand, of course, the Commissioner is authorized to take over the affairs of the Association in the event the liquidation is not being properly handled.

"Your opinion is desired to the following questions:

"(1) Can a Building and Loan Association, whose affairs are determined to be insolvent, as defined in Section 16, above recited, legally, voluntarily liquidate its affairs as provided in Section 35?

"(2) If an Association goes into voluntary liquidation, as authorized by Section 35, and subsequently thereto its condition is determined to be insolvent, can its liquidation legally be continued in a voluntary manner or would it have to be placed in receivership, as authorized by Section 16?"

I am of the opinion that your first inquiry should be answered in the negative.

Section 16 of the Act under consideration provides as follows:

"Section 16. ILLEGAL PRACTICES AND INSOLVENCY. In case the Commissioner shall find upon examination or from other evidence that any association is conducting its business in whole or in part contrary to the law of this State, or is failing to comply with the law or that its assets are less than its liabilities including all money paid in on outstanding withdrawable shares and not including permanent non-withdrawable shares, surplus and reserves, or is conducting its business in an unsafe, unauthorized or fraudulent manner which will jeopardize the safety of the investments therein, the Commissioner shall by writing addressed to the President and each director of such association direct attention thereto and order compliance with the law or the correction of unsafe, unauthorized or fraudulent practices within 30 days from the dispatch of such notice by registered mail, or in cases of insolvency, regardless of such associations methods of business, shall, with the approval of the Board, order its liquidation without notice."

Section 35 of said Act provides as follows:

"Section 35. VOLUNTARY LIQUIDATION. Any association of this state may at its annual meeting, or at any meeting called for that purpose, by a majority vote of its members resolve to liquidate and dissolve the association; providing that before such resolution shall take effect a copy thereof certified to by the president and secretary of the association together with an itemized statement of its assets and liabilities, shall be filed with the Commissioner. When the Commissioner has approved the resolutions it shall thereafter be unlawful for the association to issue shares or make any loans, and the officers of the association under the direction of its Board of Directors shall thereupon proceed to liquidate the affairs of the association and reduce the assets thereof to cash and distribute the same among the members in proportion to the withdrawal value of the holdings of each member at the time of the passage of the resolution to dissolve, subject at all times to the supervision of the Commissioner and his right to take over and handle such liquidation provided he becomes convinced that it is not being properly handled."

It will be seen from the above that under Section 16, supra, it is mandatory upon the Commissioner, with the approval of the Board, to order liquidation in cases of insolvency, regardless of the association's methods of business. The word "shall" is used throughout said section. Section 35, supra, merely authorizes a voluntary liquidation, and makes no reference to the sol-

vency or insolvency of the association. This being true, Section 16, supra, having specific reference to insolvency, will control over Section 35, supra, in cases of insolvency. Specific provisions relating to specific subjects control general provisions relating to general subjects, and things specifically treated will be considered as exceptions to the general provisions.—**Herring v. Griffin,** 211 Ala. 225, 100 So. 202.

In answer to your second inquiry, I am of the opinion that the association in question would have to be placed into receivership under Section 16, supra, and that its liquidation could not be continued in a voluntary manner under Section 35.

As above stated Section 16, supra, controls over Section 35, supra, in cases of insolvency. This, in my opinion is true after voluntary liquidation as well as before. If an association is in voluntary liquidation, becomes insolvent during the liquidation, Section 16, supra, is applicable.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 5, 1935.

Hon. J. B. Ford, Treasurer,
Tallapoosa County, School Funds,
Alexander City, Alabama.

Schools—Warrants or certificates of indebtedness issued by the County Board of Education are not negotiable instruments.

Opinion by Assistant Attorney General Screws.

Dear Sir:

This is to acknowledge receipt of your letter of November 21, 1935, which reads as follows:

"Before paying certain divided or split warrants or certificates of indebtedness appearing on the calendar pay roll for October 1935, I would like to ask your opinion on same.

"In 1932 Lee S. Moss, a negro teacher, was issued certificate of indebtedness number 3183 for $80.00 for services rendered during the month of April 1932, according to certified pay roll filed with me, and, in order that he might be better able to trade same, our Board of Education inadvertently issued him certificates of indebtedness numbers 3184-A and 3184-B for $40.00 each for the same service without taking up the original certificate for $80.00 or advising me with reference to the division of this particular certificate. For your information the original certificate number 3184 for $80.00 was presented to and paid by me before I had any knowledge of the split certificates being outstanding. Of course, the payment of both sets of certificates would simply mean paying the teacher twice for the same service, which I question the right to do, however, these split certificates are now held by innocent holders who are demanding payment.

"THE OPINION DESIRED IS: WOULD I BE HELD LIABLE FOR THE PAYMENT OF THESE SPLIT CERTIFICATES EVEN THOUGH NOW ORDERED BY THE BOARD OF EDUCATION TO PAY SAME."

I am of the opinion that your inquiry should be answered in the affirmative. The $80.00 certificate of indebtedness which was issued for the services rendered has been paid and it would be illegal to pay for said services again.

Warrants or certificates of indebtedness of local school organizations are not negotiable instruments in the sense of the law merchant or negotiable instruments law, so that there can be no innocent holder of such warrants issued contrary to law, and the rules with regard to the presentation of negotiable papers are not applicable.—**56 Corpus Juris, 565; Kimmons v. Jefferson County Board of Education,** et al. 204 Ala. 384, 85 So. 774. Any defense against the payment of same is applicable to innocent holders demanding payment.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 5, 1935.

Hon. Homer F. Mitchell,
Judge of Probate,
Cullman County,
Cullman, Alabama.

Section 9023 of the Code of Alabama, 1923, remains in full force and effect.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your letter of October 25, 1935, in which you request my opinion as follows:

"Please advise if our statute covering cancellation of mortgage which must be witnessed by the Probate Judge and a fee of 25c therefor, is still in force."

Section 9023, Code of Alabama, 1923, relative to the full payment or satisfaction of mortgage debt being entered provides as follows:

"If a mortgage or deed of trust which is of record has been fully paid or satisfied, the mortgagee or transferee or assignee of the mortgage, or trustee or cestui que trust of the deed of trust, who has received payment or satisfaction, must on request in writing of the mortgagor, or of a judgment, or other creditor of the mortgagor having a lien or claim on the property mortgaged, or of a purchaser from the mortgagor, or owner of the lands mortgaged, or a junior mortgagee, or of the debtor in a deed of trust, enter the fact of payment or satisfaction on the margin of the record of the mortgage or deed of trust. Such entry must be witnessed by the judge of probate, or his clerk, who, in his official capacity, must attest said satisfaction; or satisfaction may be made by an attorney in fact authorized by an instrument executed and acknowledged as is required of conveyances, and filed for record. For making such attestation the judge of probate is entitled to a fee of twenty-five cents. Such entry operates a release of the mortgage or deed of trust, and is a bar to all suits thereon at law or in equity."

I do not find where this section has been in any way amended or where it has been repealed since enactment.

Yours very truly,
A. A .CARMICHAEL,
Attorney General.

December 5, 1935.

Hon. Roy Johnson,
Tax Assessor, Jefferson County,
Birmingham, Alabama.

Time of filing protest to valuation fixed by the Board of Review is between the time which the Board of Review completes its assessments which cannot be later than the first Monday in April and on or before the last Monday in April.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of October 3rd, in which you state:

"Sections 72-73-74 of the new Revenue Code do not state clearly the date the taxpayer may file his protest, but does set out fully that it must be filed on or before the last Monday in April. Please render me an opinion as soon as possible regarding the legality of protests filed before the first Monday in April, and if I, as Tax Assessor of the Board of Review, should accept these protests prior to that time."

In reply, I beg to advise that it seems very clear by the sections to which you refer, particularly Section 74, the time that protests may be filed. Section 72 provides that the Board of Review shall meet on the second Monday in March to fix the assessment valuations made by the assessor and shall continue until their duties are completed, which shall not be later than the first Monday in April. Section 74 provides that the assessor shall give notice by two weeks' publication that the Board will sit on the first Monday in June to consider such protest, which protest shall be filed on or before the last Monday in April. It would, therefore, appear that the proper time for filing protest is between the time the Board of Review completes its work, which cannot be later than the first Monday in April and on or before the last Monday in April. As to your accepting protest filed prior thereto, it is difficult to see of what value such protest would be, as the Board of Review cannot legally fix the value until it sits formally to do so on the second Monday in March.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 5, 1935.

Hon. C. B. Gullatt, Jr.,
Judge of Probate,
Russell County,
Seale, Alabama.

License for one pump filling station in incorporated town of less than 1,000 inhabitants is $5.00 to the State and $2.50 to the County.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of November 21 in which you state:

"Hurtsboro, Alabama, is an incorporated town of 850 inhabitants, and to operators of 1 pump filling stations in Hurtsboro, I issued Licenses as follows:

State	$2.50
County	1.25
Fee	.50
	$4.25

"Please advise me if I am correct in the above, and if I am not please advise me what steps to take in correcting same.

In reply, I beg to advise that Schedule 672, General Revenue Act of 1935 as amended by Act No. 402 approved September 9, 1935, provides in part as follows:

"Each person operating for profit a gasoline filling station or pump in cities or towns or within three miles thereof shall pay the following privilege tax * * * . In incorporated towns of less than 1,000 inhabitants $5.00 and for each additional filler or pump $3.00."

It would appear that this provision is controlling and the proper amounts which should have been paid under the facts set out by you are: State $5.00, County $2.50, Fee 50c, Total $8.00.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 5, 1935.

Hon. Fred H. McDuff,
Sheriff Jefferson County,
Birmingham, Alabama.

Amounts paid for service of feeding prisoners in Jefferson County should be paid into County Treasury.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of July 23, 1935, in which you request my opinion as follows:

"By virtue of an Act approved July 10th, 1935, the Sheriffs of the several counties of the State are allowed a certain per diem for the prisoners in their custody as set forth therein.

"I am very anxious to obtain from you an official opinion as to whether this Act applies to my office as Sheriff. You doubtless know the Sheriff of Jefferson County, Montgomery County and possibly others are on a salary basis and that all fees etc., earned by such salary-

basis Sheriffs revert to the County. But it would appear from the language of this Act, supra, that my office may be entitled to this schedule of allowances for feeding."

The Act mentioned (H. 317 by Calhoun, approved July 10, 1935), must be construed with reference to other statutes. Section 4829 of the Code of Alabama of 1923 provides that sheriffs who are on a salary basis by Constitutional Amendment shall not receive the allowance for the service of feeding prisoners, but such allowance shall be paid into the county treasury.

Said Section 4829 is not repealed specifically and it is not repealed either by inference or because it conflicts with the new act, as both have a field of operation. Indeed, the fact that Section 4828 is specifically repealed by the new Act would indicate that it was the intention of the Legislature not to repeal any other Code sections. This is the principle that the naming of one excludes others.

I am of the opinion, therefore, that all amounts paid for the service of feeding prisoners in Jefferson County under the Act mentioned should be paid into the County Treasury.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 5, 1935.

Hon. G. H. Howard,
Judge of Probate,
Elmore County,
Wetumpka, Ala.

Issuing driver's license to person suffering from physical disability within the discretion of the Probate Judge.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I acknowledge receipt of your letter of October 9, 1935, in which you state:

"There is in this county a person who has at times a physical disability that will prevent his exercising ordinary control over a motor vehicle. At other times he is able to operate a car. We have known this man for several years and have personal knowledge of the fact that he is a very careful driver, and in our opinion he will not undertake to operate a car unless he is physically able to do so, and then he will exercise care in the operation of same. Please advise us if under these circumstances we should issue this person a driver's license."

It is my opinion that the question of issuing a driver's license under the facts as stated in your letter is for you as Probate Judge to decide.

I call your attention to part of Section 4, Act No. 331, H. B. 345, approved September 2, 1935 (Acts 1935) which is as follows:

"Section 4. A driver's license card shall not be issued to any person under the following conditions: * * * (6) When afflicted with, or suffering from, a physical or mental disability which, in the opinion of the

Probate Judge, will prevent such person from exercising reasonable and ordinary control over a motor vehicle."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 6, 1935.

Hon. E. A. Hammett,
Judge of Probate,
Talladega, County,
Talladega, Alabama.

Counties—Temporary loans cannot be renewed or refunded if made after Act No. 379, H. B. 191, approved September 9, 1935, known as the "County Financial Control Act" became effective, viz., October 1, 1935.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of November 23, 1935, in which you present the following inquiry:

"I would like to have an opinion from you upon the following questions: If Talladega County, during the month of either November or December, of this year, that is, 1935, makes a temporary loan in such amount as is authorized by law, and issues a warrant as evidence of this indebtedness, can the County refund this temporary loan by issuing interest bearing warrants as authorized by Section 6782 of the Code of 1923?"

I am of the opinion that your inquiry should be answered in the negative.

Temporary loans of a county are now governed by the following sections of the Code of Alabama of 1923; 6776, 6777 (as amended by Acts 1931, p. 639), 6778, 6779 (as amended by Acts, 1927, p. 753), 6780 and 6781, all as qualified by Section 11 of Act No. 379, H. B. 191, approved September 9, 1935, known as the "County Financial Control Act."

Section 11 of the County Financial Control Act, supra, provides as follows:

"Section 11. TEMPORARY LOANS. Nothing in this Act shall be construed to repeal the general laws of the State of Alabama authorizing counties to make temporary loans in anticipation of collection of taxes; provided, however, that hereafter no temporary loan or loans in anticipation of the collection of taxes made for the purpose of enabling counties to meet their current obligations shall exceed 95 per cent of the amount of such temporary loans made during the preceding fiscal year, except that to meet emergencies provided for in Section 17 hereof, temporary loans in anticipation of collection of taxes may be made up to the full amount provided for under the general laws of the State of Alabama; and in making up the budget provided for under this Act the amount borrowed on temporary loans in anticipation of the collection of taxes to be made during each fiscal year shall be included as a part of the operating revenue of the county for such year; and the amount of such temporary loan, principal and interest, payable in each fiscal year, shall

constitute a part of the current operating expenses to be included in the budget of the county for the fiscal year in which such loans are payable, and shall be paid out of the funds pledged therefor."
Section 6779 provides as follows:

"That Section 6779 of the Code of Alabama be amended so as to read as follows: Section 6779: 'Warrants issued under the provisions hereof shall bear interest at a rate not exceeding eight per cent per annum; shall not be for a greater sum than one half the income of said County for the preceding year and shall mature not later than February first of the year following and shall not be renewed.'

Approved September 6, 1927."

It will be noted that Section 6779, supra, specifically provides that warrants issued for temporary loans shall not be renewed. Section 11 of the County Financial Control Act provides that in making up the budget for a fiscal year the amount due on temporary loans should be included therein.

Section 6752, Code of 1923, to which you refer, has reference to refunding outstanding indebtedness evidenced by valid warrants. The specific provisions of Section 6779, in my opinion control over the general provisions of this section. Moreover , this section is now superceded by the provisions of the County Financial Control Act, supra. The only provision for refunding temporary loans under said Act is that part of Section 9, which provides as follows:

"* * * With the consent of the holders thereof, any county may refund, under the provisions of this Act, temporary loans outstanding when this Act goes into effect made in anticipation of the collection of taxes for the time and under the conditions and terms provided herein for the refunding of outstanding warrants."

It will be noted that the temporary loans must have been outstanding at the time said Act went into effect. The above quoted proviso would have no bearing on temporary loans made thereafter. This also shows a legislative intent that no temporary loans shall be renewed or refunded if made after the effectitve date of said Act.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 7, 1935.

Hon. Gaston Scott, President,
State Highway Commission,
Montgomery, Ala.

Highways—Highway Department authorized to pay for removal of car tracks in City of Montgomery under Project NRM 194-C (1935) Montgomery County.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of December 2, 1935, relative to Project NRM 194-C (1935) Montgomery County, in which you state as follows:

"The Department in authorizing the above numbered job wishes to know whether it has the authority to remove the street car tracks on Bibb and Madison Street between Perry and Catoma? Also to pave the area occupied by the tracks upon their removal. The Highway Department wants to pay for this out of the funds allocated by the Federal Government.

"The City of Montgomery has passed an ordinance permitting this to be done and the Department wishes the approval of the Attorney General's office before proceeding."

I am of the opinion that both of your inquiries should be answered in the affirmative.

This office has heretofore ruled in matters of this kind that the Street Railway Company is not liable when the work is done by the State of Alabama under the provisions of Article 33 of Chapter 43 (Sections 2174-2237 of the Code of 1923). Such provisions relate only to the improvements done by the city or town and not improvements done by the State.—**Opinions of the Attorney General to the President of the State Highway Commission on November 19, 1935, and August 1, 1935.**

In view of the above it is my opinion that as the work in question is done by the State Highway Department, it has authority to remove the car tracks in question and pay for same out of the funds allocated by the Federal Government.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 7, 1935.

Hon. Roy Sanderson,
Judge of Probate,
Hamilton, Ala.

Counties—Gasoline:

Under facts set out, County authorized to make expenditure out of gasoline funds for building bridges on the public roads of the County made necessary by the erection of certain drainage canals.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of November 22, 1935, stating:

"About ten days ago I wrote you for an opinion as to the legality of a warrant which has been ordered to be drawn by the Court of County Commissioners on the gasoline tax fund, payable to State Drainage District Number Four, Marion County, Alabama, for the purpose of building bridges in said drainage district. This district was organized in 1929 and assessments of benefits were assessed against Marion County, Alabama, by the Board of Viewers of said district in a lump sum of several thousand dollars. On the hearing of the viewers report in the Probate Court, it was agreed by the commissioners court, and a resolution placed upon the minutes to that effect, that the county would build good and sufficient bridges where roads crossed the canals.

"Now, the drainage district is issuing bonds for 55% of the cost of construction of the canals and bridges, and the Federal Government is donating 45% of the costs of construction. The plans and the contract which has been let call for creosoted timber bridges, and the commissioner in whose district the entire drainage district is located has had a warrant drawn for $2,992.00 which is 55% of the amount bid by the contractor for the construction of the bridges,—this claim, copy of which claim is herewith enclosed, was allowed by the commissioners court and has been filled out but not delivered. The intention of this money being paid out of the gasoline fund is for the payment of the bridges and upon payment thereof the county will be relieved of any further cost of the bridges.

"Before delivering this warrant, I want your opinion as to whether same is legal. The attorney for the drainage district has called upon me for the warrant, and I have put him off about delivering it until I have your opinion of its legality. I am informed that the money from the federal government will be available in a few days, and probably will not be released until this warrant has been delivered to the district and the money for same deposited in a bank. Delay may cause the county and the drainage district to lose the opportunity to get this loan and grant, and the improvement in the district."

You also under date of November 27, 1935 write as follows:

"Herewith letter requested over the telephone in connection with the matter of warrant for State Drainage District Number Four, Marion County, Alabama, said warrant being drawn on Gasoline Tax Fund of County.

"Also, I am sending you certified copy of the order or agreement made by commissioners court with said district in 1930, or rather authority for Judge of Probate to make an agreement with the district as to the building of bridges in this district.

"The bridges to be built will be on public roads, across the canals at places where roads crossed the original streams or near the original places of crossing.

"I want this project to go through for the drainage district, but want to be safe in delivering the warrant."

You further attach certified copy of Minutes of Commissioners Court showing order authorizing said expenditure, which (Title and Certificate omitted is as follows:

"It is the Judgment, order and decree of the Commissioners Court of Marion County, Alabama, that W. H. Cantrell, Clerk & Chairman of said Court is hereby authorized to contract and agree with the Commissioners of State Drainage District Number Four and the Commissioners of State Drainage District Number Six, for and on behalf of Marion County, Alabama, that Marion County will construct good and sufficient bridges across the canals in said district where said canals are crossed by County Public Roads in consideration of and in lieu of the benefits which have been assessed by the Board of Viewers of said District against said Marion County and the building of said bridges shall be a discharge of and in lieu of any and all assessments against Marion County by the operation of said drainage district."

From a reading of the whole, I understand that State Drainage District Number Four has been previously created and under its authority certain canals have been built which intersect public roads of the County, making the erection of bridges over such canals necessary.

That in lieu of any charges against the County for such drainage expense, it is proposed that the Drainage District build such bridges and the County contribute 55% of the cost thereof, and be relieved of any further expense in building said bridges.

In your letter of November 27, you specifically state:

"The bridges to be built will be on public roads across the canals at places where roads crossed the original streams or near the original places of crossing."

It therefore appears that these bridges are a part of the road and bridge system of the County and under ordinary circumstance would have to be provided by the County.

By the proposed arrangement the County will be relieved of 45% of the cost of erecting such bridges.

Under the facts the funds are to be spent exclusively for the erection of public bridges (or roads) in the County, which use is authorized and required by the various gasoline tax acts and particularly Schedule 156.9, and that portion of 156.11 applying to the Counties' portion, of the Revenue Act of 1935.

It is therefore my opinion that the County is authorized to make the expenditure in the manner set out and that the issuance of the warrant therefore payable out of the gasoline fund is proper.

Yours very truly,
A. A. CARMICHAEL
Attorney General.

December 9, 1935

Hon. N. P. Tompkins,
Judge of Probate,
Colbert County,
Tuscumbia, Alabama.

Licenses—Under facts detailed, peddler entitled to Veterans' Exemption under Act No. 494 S. B. 348 (General Acts 1935).

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of November 12, 1935 in which you inclose letter stating the following facts:

"On November 7, 1935, while I was engaged in selling neckties and razor blades etc. in Tuscumbia, Alabama, I was picked up and brought before you and compelled to pay a license for a transient vendor in the amount of $35.50. I had with me at the time a city license granted me as an exempt disabled ex-service man (Discharge Cetrfiicate No. 86651). At the time that I paid the license I was not aware that I was also entitled to an exemption under the State law.

"I am enclosing the license issued me by your office. If there is anything further necessary to entitle me to a refund, either of the entire amount, or to such part as I am entitled, I shall be glad to comply with any request upon receipt of same."

On these facts, you request my opinion as to whether veterans are exempt from license as peddler, and state that if you find that they are so exempt, you will be glad to sign a petition for refund.

I call your attention to the pertinent part of the so-called Veterans' Exemption Act No. 494, S. B. 348 (General Acts 1935) which contains the following proviso:

"Provided that no exemption, deduction or commutation shall be allowed any person from the license or tax on what is commonly known as **rolling stores.**" (Emphasis supplied.)

This office has heretofore held in an opinion addressed to the Hon. D. E. Laslie, Judge of Probate of Macon County, Tuskegee, Alabama on October 9, 1935 that a War Veteran (Otherwise qualified under the Act) engaged in the business of operating what is commonly known as **rolling store** is not entitled to any exemption whatever from license tax.

It is to be noted that both the proviso above cited and the opinion of this office based thereon are limited to the operators of **rolling stores.** No mention of "peddlers" appears in the so-called Veterans' Exemption Act.

Corpus Juris (54 C. J. 1102) defines a "rolling store" as "A store on a truck or motor vehicle carrying stock of groceries or other goods and selling the same to the public." The typical "rolling store" is described (Erwin vs. Omaha 224 N. W. 692-693 Nebr.) as a miniature store, stocked with merchandise placed on an automobile or truck so that the store can move from house to house, and the merchandise sold therefrom the same as it would be sold from a store at a fixed location. The scheme of the business is to give purchasers cash and carry prices at their doors.

Confining this opinion to the facts detailed by you, it would appear that the peddler, to whom the attached license has been issued, comes within the provisions of the so-called Veterans' Exemption Act, supra, so as to entitle him to the exemptions therein granted.

It further appears from the license attached to your inquiry that such license was issued under Schedule 147 of the Revenue Bill of 1935, which imposes a tax on "each person doing business as a **transient dealer.**" It not appearing from the facts as set out by you that the party licensed was such a "transient dealer" as defined by the above schedule, it is my opinion that the license was improperly issued and that same should be refunded on proper application as provided by Section 366 of the Revenue Bill, supra. If the party was in fact a peddler, he was subject to the license imposed by Schedule 146 upon "transient vendors or peddlers," and **not** that imposed by Schedule 147 supra, upon "Transient dealers".

Premises considered, it is my opinion that the party mentioned should receive the refund to which he is entitled within the privisions of this opinion.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 9, 1935.

Hon. Edward L. Colebeck,
Superintendent of Education,
Hale County,
Greensboro, Alabama.

Proceeds from the sale of land which was conveyed to the State under the provisions of the law relating to securing State aid in the erection or repair of a rural schoolhouse, shall be used by the County Board of Education for the exclusive use of the public school building fund of the county, which use includes the right to purchase land for a new school building in county.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of November 15, 1935, in which you state:

"Permit me respectfully to ask your opinion in regard to the following legal embarrassment which confronts the Hale County Board of Education.

"Due to a local situation it has been found desirable, on the request of both negroes and whites, to sell the negro school lot in Moundville on which the school building has been destroyed by tornado and to buy another lot in a more favorable location on which to erect a negro school in said town. The sale of said school lot has been legally effected, the proceeds of which sale realized $250.00. This sum in accordance with the provisions of the Alabama School Code has been placed to the credit of the Public School Building Fund of this County. I am advised by officials of the State Department of Education that in strict interpretation of the Alabama School Code, the said $250.00 cannot be used to purchase another school lot for said negroes, but must be used for the construction of buildings only.

"Let me add that after a canvass of the situation I find that neither from negroes nor from whites at Moundville can sufficient cash subscriptions be obtained to purchase another school lot. **The negroes at Moundville are without a school building.**
You request my opinion:

"Whether under these peculiar circumstances it would be legal to take the said sale price of the lot, $250.00, from the Public School Building Fund of the County with which to buy another school lot for the Moundville negro school."

It is my opinion that your question should be answered in the affirmative.

I am assuming from the facts in your letter that the lot in question had been conveyed to the State for the erection or repair of the schoolhouse, then the proceeds from the sale of said lot would be governed by Section 389 of the 1927 Alabama School Code, which is as follows:

"389. Purpose For Which Proceeds of such sale May Be Used.—If said lands were conveyed to the State under the provisions of the law

relating to securing State aid in the erection or repair of a rural schoolhouse, the proceeds of the sale thereof shall be used by the County Board of Education for the exclusive use of the public school building fund of the County. If the lands were conveyed to the State under the provision of the law relating to high schools and there had been no State aid in erecting or repairing any building thereon the proceeds of the sale thereof shall constitute a part of the public school fund of the County."

It is my opinion that the section, supra, should not be literally construed, but should be examined along with other sections of the statute, so as to arrive at the intention of the legislature as expressed in the statute as a whole.

"The fundamental rule of construction is to ascertain and give effect to the intention of the Legislature as expressed in the statute."—**Street v. Cloe,** 207 Ala. 631, 93 So. 591.

"The fundamental rule in construing a statute is to ascertain and give effect to the legislative intention, expressed in the statute without assuming legislative authority, but where language is of doubtful meaning or adherence to strict letter would lead to injustice, absurdity or contradictory provisions. Courts must ascertain the true meaning, or if possible, give reasonable contruction consistent with legal principles."—Ex parte Allgood, 213 Ala. 426, 104 So. 851.

"Courts in construing a statute will give it that construction which will effectuate the purpose of the Legislature in passing it."—**Lynn v. Broyles Furniture Co.,** 3 Ala. App. 634, 57 So. 122.

In my opinion the Legislature intended to restrict the use of funds derived from the sale of school lands as outlined in your letter, to the replacement of school facilities in the county, and that such replacement would include the purchase of land and the placing of school building on the land.

I believe that to hold that the building fund could only be used for buildings and not for the purpose of acquiring sites for the erection of the buildings would be to defeat the purpose of the statute.

I can conceive of many instances where the county might have a substantial building fund, but would still be without the benefits of educational advantages because it was not able to acquire a site for the schoolhouse.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 9, 1935.

Hon. Hamp Draper,
Associate Member,
Board of Administration,
Montgomery, Alabama.

Sheriffs—Reward in Distilling Cases—Claimant of sum provided under Sections 4626 and 4659 Code of 1923 as amended by Acts of 1933 page 200 must present certificate signed by presiding judge. Balance due on distilling fees after part payment need not be certified second time.

Opinion by Assistant Attorney General Small.

Dear Sir:

Under date of October 19, 1935, you request my opinion as follows:

"This Department respectfully asks your opinion in the case, facts of which we are outlining:

"The Sheriff of Chilton County, through his Attorney, has applied to this Department for a balance on distilling fees, part payment of which has been received. This Department instructed the attorney to have the sheriff make out new certificates in the several cases and attach claimant's affidavit showing amount paid, date paid and balance due.

"The Attorney advises this Department that the Trial Judge who tried several of the cases is now dead. Sections 4626 and 4659, Code of Alabama, 1923, specifically states, 'The claimant shall satisfy the trial judge that he is the person entitled to said sum and receive from the judge a certificate to that effect.' As previously stated, the judge trying a number of these cases, where balances are due is now dead.

"QUESTION: Can this Department legally pay these questionable claims upon the certification of any person other than the trial judge?"

In reply, I wish to advise that the law is clear on the question of whether or not these claims may be paid upon certification of any person other than the presiding judge. Section 4626 of the Code of 1923 provides as follows:

"4626. Fifty dollars allowed sheriff or officer furnishing evidence to support conviction taxed as costs.—Whenever any person is convicted in the circuit court or unlawfully distilling or manufacturing or making any of the prohibited liquors or beverages as defined by this Code, there shall be charged in the bill of costs to be paid and collected of other items of cost, the sum of fifty dollars, to be allowed the sheriff or other officer or person who furnished the evidence and brought about the conviction, and **who shall satisfy the presiding judge that he is the person entitled to said sum, and shall receive from the judge a certificate to that effect."** (Emphasis ours.)

Section 4659 of the Code of 1923 as amended by the Acts of 1933, at page 200 provides as follows:

"4659. Fifty Dollar fee to sheriff charged in bill of costs on conviction.—When any person is convicted of violating the provisions of this article, there shall be charged in the bill of costs the sum of fifty dollars to be allowed the sheriff or other person who furnished the evidence and brought about the conviction, and **who shall satisfy the presiding judge that he is the person entitled to said sum, and shall receive from the judge a certificate to that affect."**

You will note that no provision of law is made for any person other than the presiding judge to certify which of the persons named in the Act is entitled to the sum here provided.

I gather from your request that a part of each of these claims has been paid, but that there is a balance due on each claim. If these claims were properly certified by the presiding judge at the time of their presentation to the Convict Department for payment, and there is a balance due on the said

claims, then in my opinion it is not necessary to have new certificates for the payment of the balance due.

I wish to refer you to the Biennial Report of Attorney General 1928-1930, page 575, opinion to The Chief Examiner of Accounts, Capitol, August 10, 1929.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 9, 1935.

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Bailiffs—not entitled to payment for meals and lodging when kept with jury.

Attorney General's opinion not affected generally by declaratory judgment opinion of Circuit Court.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of November 20, 1935, which reads as follows:

"I am in receipt of a letter from Mr. S. P. Singleton, Assistant Examiner of Accounts, inclosing a copy of a Declaratory Judgment rendered by Hon. J. Fritz Thompson, Presiding Judge, Tenth Judicial Circuit. In this decision Judge Thompson holds that baliff is entitled to meals and lodgings when kept with a jury by direction of a court and that the costs of same are a lawful charge against Jefferson County.

"Since this Declaratory Judgment is in conflict with your opinion rendered on December 13, 1933, page 449, Biennial Report of 1932-1934, I herewith respectfully request that you review said opinion in order to clarify the existing situation."

After a due consideration of the opinion of this office found in Biennial Report 1932-1934, p. 449, and the declaratory judgment opinion of the Circuit Court of Jefferson County, I am of the opinion that the opinion of this office is correct.

Regarding the protection of public officers on their official bonds, I am of the opinion that opinions of the Attorney General control over declaratory judgment opinions of the Circuit Courts in general.

Section 869 of the Code of 1923, provides as follows:

"869. Written opinion of attorney-general protects officer.—The written opinion of the attorney-general secured by either a state or a county officer legally entitled to secure opinion, shall protect such officer to whom it is directed from liability to either the state, county or other municipal sub-division of the state, because of any official act or acts performed as directed or advised in such opinion."

The only limitation on said section in Section 10291, Code of 1923, which provides as follows:

"10291. Opinion of supreme court protective.—The opinion of the justices of the supreme court or a majority of them shall be a protection to the officers and departments of the state, acting in accordance therewith, in the same manner and to the same extent as opinions of the attorney general of the state, and in the event of a conflict between the opinions of the attorney general and the opinion of the justices of the supreme court rendered in accordance with this Article 7 of the code, the opinion of the justices of the supreme court shall take precedence and prevail. All opinions of the justices of the supreme court heretofore rendered in accordance with this article shall have the protective force and effect provided for herein."

It will be seen from the above that the opinions of the Attorney General will protect public officers subject only to the limitation that opinions of the Justices of the Supreme Court which are in conflict control. Of course, an adjudicated case in the Circuit Court will control in each particular case but does not affect the opinions of the Attorney General generally.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 9, 1935.

Hon. J. A. Keller,
State Superintendent of Education,
Capitol.

Schools—Warrants issued against three mill tax preferred claim against and upon proceeds of levy.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of November 27, 1935, which is as follows:

"Superintendent E. E. Owne of Tallapoosa County has requested me to refer the following question to your office for an opinion:

"Sections 283-286 of the Alabama School Code of 1927 with amendments thereto provide that any warrants which are issued against the proceeds of the three mill tax constitute a preferred claim against the proceeds of that tax.

"Can the board of education use any proceeds of the three mill tax which may be available early in the year to pay salaries of teachers or to meet other necessary expenses, provided a sufficient amount of the anticipated proceeds based on taxes to be collected is left to meet the payment of principal and interest on warrants coming due later in the year, or must a sufficient amount of the proceeds of the three mill tax to meet the payments of warrants coming due during the year first be set aside before any other payments are made from the proceeds of this tax?

In answer to your inquiry, I am of the opinion that the first proceeds of the three mill tax may be used to pay other legal expenditures therefrom provided that there will be sufficient amount on hand to pay warrants issued against said tax when same becomes due.

Section 283 and 284 of the School Code of 1927, provide that warrants issued against the three mill tax shall be a preferred claim upon the proceeds of the levy. It is further provided that a sufficient sum be set aside **each year** to meet said payments. In my opinion, the requirement of the statute is met if a sufficient sum be set aside by the time the warrants become due. The first proceeds from the levy need not ncessarily be set aside.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 11, 1935

Hon. Saxon P. Poyner,
Judge of Probate,
Houston County,
Dothan, Alabama.

Board of Revenue—may make appropriation for erection of County Library building.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your letter of November 16, 1935, in which you request my opinion as follows:

"The Board of Revenue has been requested to make an appropriation for the erection of a County Library.

"Please advise if the Board can legally make this appropriation."

In my opinion your inquiry should be answered in the affirmative.

Section 1545, Code 1923, as amended by General Acts 1927, page 69, provides for the establishment etc. of free public libraries in the various counties of the State by the governing body of such County, and gives to such governing body the power to "make appropriations from the County Treasury in support thereof in such sums as they may deem proper, not to exceed $5000 annually, except that Counties of 150,000 inhabitants may appropriate annually a sum not to exceed $20,000.00." Section 1546 vests the government and supervision of such libraries in a **county library board**, consisting of the probate judge, as Chairman, and the County Superintendent of Education, both ex-officio, and three others to be elected by these authorities. Section 1547, as amended by General Acts 1927, page 69, Section 2, sets forth the powers and duties of the library board, in the following terms:

"The library board so created shall have full power and authority to control the expenditures of all funds received or appropriated for such libraries; to erect or rent buildings to cost not in excess of the funds available to them; to purchase books and equipment, to provide a system of circulating or traveling libraries; to elect a librarian and other employees, and otherwise to have full authority and power to manage and control the said library in order to carry out the full intent and purpose of this article; and a careful and complete record and set of books shall be kept by the library board, showing the proceedings of their several meetings and the disbursement in detail of all funds expended by them. In counties where, in the city having the largest population, a free pub-

lic library is already established and in operation, a separate county library board shall not be appointed, but the county libraries and the appropriations authorized shall be administered by the governing board of such free public library on such terms as may be agreed upon between the above named county authorities and the said governing board."

It will be seen from the foregoing that the Board of Revenue, or other county governing body, is given the specific authority to make appropriation as may be necessary for the establishment of a county library. This authority is distinctly within the province of such governing body. But there its authority ceases, for the expenditure of such funds as are appropriated shall be under the supervision of the Library Board, as provided by Section 1547, supra.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 11, 1935.

Hon. Roy Johnson, Tax Assessor,
Jefferson County,
Birmingham, Alabama.

The fact that property which has been sold to the State for taxes would have been exempted from ad valorem taxes, if owned by an individual, does not affect the amounts required to be paid upon redemption, the terms of redemption from sales to the State being fixed by the Legislature.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of December 4, in which you state:

"The Rev. John A. May of this city has a building which was sold for 1931 taxes. He is getting ready to redeem this property and has asked for an exemption on part of it for 1935 as the U. S. Government is using it as a work-shop for the Dept. of Public Welfare and it is under lease to them for 1935 and will be for 1936 without any consideration.

"Please advise if property being redeemed from the State which has been in the control of the State would be exmpt under these circumstancs for the years 1935-36?"

In reply, I advise that in an opinion to Hon. Eugene H. Hawkins, Probate Judge, Jefferson County, dated November 22, 1935, I discussed at length the redemption statutes found in the 1935 Revenue Act. In this opinion, among other things, I stated (Page 5):

"After the sale to the State, there can be no assessment or tax liability. While the amounts required to be paid upon redemption for the year subsequent to the sale are loosely termed annual taxes, such terminology is merely one of convenience, to describe the annual amounts which the Legislature has declared shall be paid. The fact that the Legislature has endeavored to have such amounts approximate what the annual taxes would have been if the property had been individually own-

ed, does not convert such 'amounts' into 'taxes' or the annual valuations provided by the statutes into 'assessments'."

Applying this rule, it would seem that the Legislature has provided a definite method of redemption and that the fact that the property, if it had been individually owned, might have been exempted from taxes, does not apply in redemption cases. The legislature specifically has provided what shall be paid, and a party desiring to redeem must follow the directions of the Legislature. If I understand the last paragraph of your letter, you inquire if upon redemption the annnual amount which would be payable for the year 1935-36 may be omitted because the property presumably would have been exempted if individually owned. If I am correct in this assumption, my answer is in the negative as shown by the foregoing.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 11, 1935.

Hon. Jno. I. Smith,
Tax Collector,
Etowah County,
Gadsden, Alabama,

Tax Collector required by Section 164 of the Revenue Act of 1935 to make personal demand in writing upon delinquent taxpayers and required to collect fee of fifty cents for such demand as provided by Section 162.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"I know that you must be pressed for official opinions. As the new Tax Collector for Etowah County, Alabama, I am anxious that I follow the law to the letter. It will not be my policy to burden you with many requests.

"I would thank you to look at Section 162, General Revenue Bill for 1935 at page 99 and give me an opinion on the following:

"(1) In view of the fact that I am not on fees any longer, is it compulsory or mandatory that I, as Tax Collector, collect the 50 cent fee named in the first part of said section, where it states that for making actual demand on delinquent taxpayers, the collecter shall be entitled to receive a fee of fifty cents from each taxpayer on whom such demand is made. Frankly, if I can legally save the overburdened taxpayers this extra little fee, I want to do it. I note that the section does not say that I shall receive this fee, but that I shall be entitled to receive it, leaving the inference that if I do not want to receive it, it is not mandatory that I so receive it.

"I would greatly appreciate your rendering your opinion on the foregoing at your earliest opportunity."

In reply, in conjunction with Section 162 to which you refer, I call your attention to Section 164, which states:

"After the 1st day of January, the Collector must make a personal demand in writing upon delinquent taxpayers or their agent charged with the duty of paying their taxes whenever they may be found for the amount of their taxes and fees and when unable to find them, to make a demand by registered mail, directed to his last known place of residence or business, return card demanded."

You will note that there is a mandatory requirement on the Collector to make the demand and being required to make the demand, the fee authorized by Section 162 accrues and should be charged.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 11, 1935.

Hon. Wm. W. Hill,
Judge of Probate,
Montgomery County,
Montgomery, Alabama.

Taxation—Redemption

Further construction of provisions relating to redemption construed in the light of opinion to Eugene H. Hawkins, Probate Judge of Jefferson County dated Nov. 22, 1935.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of December 7th, in which you state:

"We have a copy of an opinion rendered to Judge Eugene H. Hawkins, Probate Judge of Jefferson County, Alabama. I presume that I should govern myself according to this opinion. Am I right in this opinion?

"I am asking the following questions. Will you kindly give me a reply at once, so that I may govern myself accordingly, and not embarrass the person making the redemption, or embarrass this office?

"1. May a person make a cash redemption under the statute, (Section 291 of the Revenue Bill) without the payment of interest on the sale or subsequent taxes?

"2. If a person may make a cash redemption without the payment of interest, is it necessary to submit the application to the State Land Commissioner?

"3. If a person elects to pay cash (without interest and penalties) must we issue his partial redemption receipts, or shall we issue the usual certificate of redemption?

"4. If a redemptioner elects to come under the 4 payment plan, can he come in thirty or sixty days after the first payment and pay the balance due?

"5. If a person elects to come under the 4 payment plan can the State step in and collect rents from the property while it is in the process of redemption? If so, does the redemptioner get credit for the amounts paid as rent?

"6. The law states, that if application is made within four years, etc. (Sec. 291). If application is made and more than four years have passed since the sale, can a party redeem the property? If so, outline the process of redemption, interest, fees, etc.

"7. On redemptions where it is necessary to charge interest, is the rate 6% or 8% per annum?

"I will appreciate very much, an early reply to the foregoing, as there is a case now held up in the Circuit Court, awaiting a decision of the very matters in the above.

"I have read the opinion addressed to Judge Hawkins and if I can get the foregoing questions answered, it will clarify the matter in my judgment."

In reply, I advise that the answer to most of your questions is to be found in an opinion addressed to Hon. Eugene H. Hawkins, dated November 22, 1935, a copy of which was furnished you for your information and official guidance.

The answer to question 1 is to be found on pages 13 and 14 of the opinion, the applicable excerpts being as follows:

"It is reasonably clear, I think, that the term 'Without interest or penalties' refers to the amount for which the property sold plus the annual accumulations since such sale, which, as I have pointed out, are not taxes, but amounts fixed by the Legislature. 'Without interest or penalties' modifies and refers to accrued taxes' rather than 'installments.' As above observed, this is true where the statute is strictly followed and redemption is made upon the partial payment plan."

* * *

"It is, therefore, my conclusion that as to property sold to the State for taxes prior to January 1, 1935, if application is made within four years from the date of sale, redemption is authorized by Section 291 without the payment of interest and this is true whether such redemption be for cash or on the partial payment plan. I think further that should a person paying the first installment desire to complete his payment in less time than allowed, he has that right, though such payment must be in multiples of one-fourth of the total amount originally due."

Answering question 2, I advise that it is not necessary to submit the application to the State Land Commissioner except where application is made for partial redemption under provisions of Sections 271 and 271-1.

Answering question 3, I advise that if the redemptioner pays the entire amount required for redemption in cash, there seems no reason why the usual certificate should not be issued.

The answer to question 4 is to be found specifically in the following quotation in the Hawkins opinion:

"It is, therefore, my conclusion that as to property sold to the State for taxes prior to January 1, 1935, if application is made within four years

from the date of sale, redemption is authorized by Section 291 without the payment of interest and this is true whether such redemption be for cash or on the partial payment plan. I think further that should a person paying the first installment desire to complete his payment in less time than allowed, he has that right, though such payment must be in multiples of one-fourth of the total amount originally due."

It does not appear that question 5 is a matter affecting your official duties as Probate Judge, the question affecting primarily the rights of the State and the taxpayer.

In answering question 6, I advise that if the sale was made more than four years prior to the application for redemption, then it would appear that the party may redeem under Sections 268 and 269 of the Revenue Act of 1935. The machinery of redemption is not different from that in other cases.

In answer to question 7, I call your attention to the last paragraph of the Hawkins opinion which fully and specifically answers your inquiry.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 13, 1935.

Hon. J. Lee Smith,
Judge of Probate,
Chilton County,
Clanton, Ala.

License—

A person selling fruit from a truck which remains at one fixed place during the entire time fruit is offered for sale is liable for a fruit stand license as levied by Schedule 66. Section 348, Chapter I, Article XIII of the Revenue Act of 1935.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of November 18, 1935, which follows:

"Will you please advise me whether or not in the statement of facts as set out below that there would be due a transient dealer's license under Schedule 147 or Fruit Stand license under Schedule 66 of the Revenue Code of 1935?

"A person owns his own truck and goes to Birmingham and purchases a truck load of apples and brings them to Chilton County and parks his truck at the same place or approximately in the same place in the street adjoining the Court House property and from his truck sells apples at retail. This party does not deliver any apples and does not peddle any apples, except as above stated and all parties who desire to purchase apples from him must come to his truck and buy from the truck. This truck is parked about eight o'clock in the morning and stands in the same place until about six o'clock at night and then the truck, with whatever apples might be remaining, is carried to the party's home and the next morning the truck is again parked at the same place or as near

the same place as possible for the trade the next day. This party does not sell apples in any other town in the county or at any other place in the county, except the one place as indicated above and makes no deliveries, but sells only from the truck.

"Will you please advise me whether or not this party is due a transient dealer's license or a fruit stand license or what other license he might be due under the Revenue Code?"

In answer to your inquiry, I call your attention to Schedule 66, Section 348, Chapter I, Article XIII of the Revenue Acts of 1935, which is as follows:

"For each person selling fruit from a fruit stand, store or other established place or business, in cities or towns of over ten thousand (10,000) inhabitants, ten dollars; ($10.00) and in all other places whether incorporated or not five dollars ($5.00). Provided this section shall not apply to regular merchants carrying fruit as a part of their stock of merchandise but who do not display same in front of their place of business, and whose ad valorem assessment on his stock of merchandise at the place where such fruit is sold is in excess of one hundred dollars."

In your letter you state that the fruit dealer described therein parks his truck at the same place, or approximately the same place in the street every day, and from the truck sells apples at retail, not moving the truck at any time during the period in which he is offering the apples for sale.

It is my opinion that under a reasonable construction of the term "fruitstand," as used in Schedule 66, supra, the party described in your letter under the exact facts outlined by you, is operating a fruitstand and is liable for the license levied for such operation by Schedule 66 supra.

A peddler of fruit is specifically exempted from the payment of license levied by Schedule 146, Section 348, Chapter 1, Article XIII of the Revenue Act of 1935 and the license levied by Schedule 147, Section 348, Chapter 1, Article XIII of the Revenue Act of 1935, applies to transient vendors or dealers who sell to retailers for resale, and not to persons who sell at retail as the party described in your letter.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.
December 13, 1935.

Hon. Ab Crow, Sheriff,
St. Clair County,
Ashville, Alabama.

Attention Pat Cornett

Counties—Liable for electricity for electric refrigerator operated in County Jail.

Counties—Liable for purchase of cook stove and utensils used in cooking food, but not fuel used.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of November 11, 1935, in which you request my opinion as to whether the county is liable for the payment of the following items used in feeding prisoners at the St. Clair County Jail at Pell City, Alabama.

"First. The use of electricity for electric refrigerator for preserving and caring for prisoners' food and ice when necessary.

"Second. For fuel, kindling, wood and coal in preparing and serving food to prisoners.

"Third. For payment of stove and cooking utensils for preparing and serving food for prisoners."

Your first inquiry should be answered in the affirmative. This office in the following opinions has held that a county is liable for the purchase of an electric refrigerator used for prisoners in the county jail.

Opinions to:

Hon. C. E. Corprew, Sheriff, Tallapoosa County, Dadeville, Alabama, May 20, 1935.

Hon. N. P. Tompkins, Judge of Probate, Tuscumbia, Colbert County, Alabama, July 11, 1935.

The authority to purchase an electric refrigerator, of a necessity, carries with it the corresponding right to pay for the electric power which is a prerequisite to its proper operation.

It is to be noted in this connection that the above cited opinions were based on the recent case of Holcombe v. Mobile Co. 155 So. 640. In that case we find the following which restricts the liability of the county for such electricity to refrigerators operated in the jail.

Your second and third inquiries have been heretofore answered by opinion of this office of April 15, 1935 to Hon. F. B. Thompson, Judge of Probate, Clay County, Ashland, Alabama. I enclose herewith copy of this opinion for your convenience.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 16, 1935.

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

State Comptroller—Not authorized to audit or require itemization of application for refund of license tax made to Probate Judge under authority of Sections 375-376 of Revenue Act of 1919 (Acts 1919, page 445) nor certificate of Probate Judge issued upon such application.

License and Taxation—Sections 375-376 of Revenue Act of 1919 (Acts of 1919, page 445) authorizing refund of license taxes erroneously paid

under mistake of law or fact provided remedy for the recovery of such license tax so illegally exacted; and neither application for refund thereof nor certificate of Probate Judge passed thereon may be audited by State Comptroller notwithstanding Section 4, Acts 1932, page 35 nor any other provision of law making it the duty of said Comptroller to audit all demands by the State and to pre-audit all accounts for the issuance of warrants, etc.

Opinion by the Attorney General.

Dear Sir:

I have your request for opinion dated November 8, 1935, as follows:

"1. Has the State Comptroller authority to require that an application for a refund of Mortgage and Deed Tax be itemized?

"The law states that all accounts or claims must be properly itemized and sworn to before a Notary Public and it is my contention that the above mentioned application must be itemized in order that same may be properly audited.

2. Has the State Comptroller authority to audit an application for a refund of tax or licenses?

"The law states that all accounts or claims against the State must be audited by the State Comptroller before same can be paid. It is my contention that an application for a refund of tax or license must be audited before the State Comptroller can legally issue a warrant."

These question have been answered, in effect, in the negative, by opinion of this office dated August 21, 1935, addressed to Hon. Charles E. McCall, State Auditor, and a copy of which is hereto attached.

The case of White, State Auditor, v. Smith and others, 23 So. 525, 117 Ala. 232 had under consideration one of the forerunners of the present statutes providing for refund of licenses or taxes paid under mistake of law or fact.

There the Auditor raised the question as to whether Section 109 of the Code of 1886 governed a claim against the State for a refund of taxes based upon a proper certificate of the County Governing Body made under authority of Acts 1890-91, page 1139. The said Act provided that:

"Any person who by mistake has paid taxes which he ought not to have paid to apply to the commissioners' court to have such taxes refunded. Upon such application being made, and the mistake being established to the satisfaction of the court, they may direct and order the probate judge to draw a warrant on the county treasurer in favor of such person for the amount of county taxes shown to have been so improperly paid; and the court may authorize the probate judge to certify to the auditor such mistake and the amount of state taxes which have been so improperly paid. On the presentation of such certificate to the auditor, **if he finds the same correct in fact and amount,** it is his duty to draw his warrant on the state treasurer for the amount so certified by the probate judge, which is payable from any funds in the treasury not otherwise appropriated."

Section 109 of the Code of 1886 required that:

"All accounts against the State must be accurately and fully itemized and accompanied by the affidavit of the party stating the correctness of the same, stating that no portion of the account has been paid."
In speaking to the question Mr. Chief Justice Brickell for the court, said:

"The fact of audit and allowance is certified, or the order of payment is drawn by the judge of probate. The treasurer necessarily examines the one or the other to ascertain its genuiness. While the examination may be said to involve judgment in some degree the duty to be performed is ministerial, simple, and well defined.—the payment of the claim in the order and upon the conditions the statute may prescribe. When the claim is ascertained by the court of county commissioners, it passes beyond the form of an account. It is established by the judgment of the court, and needs no verification or itemization. The judgment imports, and, until impeached in a proper mode and by proper procedure, is the absolute evidence of, its own verity. The statute (Code 1886, Sec. 109) to which we have referred manifestly has reference to special claims against the state, remaining in the form of open accounts and not to claims the amount of which have been ascertained and declared in the course of judicial proceedings, before and by a court of competent jurisdiction. Besides the want of verification and itemization was not the ground of the refusal of the auditor to draw the warrant, and we are not inclined to the opinion, if there was any force in the objection, that he could now be heard to make it."

So far, in my opinion, notwithstanding the fact that the certificate for refund of mortgage or deed tax erroneously paid, executed by the Probate Judge, does not have attached to it an itemized application for such refund, the State Comptroller has no authority to require the same to be itemized; nor can such State Comptroller audit the application for refund or the certificate of the Probate Judge based upon such application.

The case of Blan, Auditor v. Hollywood Realty Company, 218 Ala. 1, does not militate against the rule established in the White case, supra. In the latter case it is merely held that the Probate Judge's certificate that the license tax was erroneously paid for the reason that the Act under which it was collected was unconstitutional was not binding on the courts as to the constitutionality of the said Act. See also the manuscript opinion of the Supreme Court in Ex Parte Alabama Pension Commission, et al, Third Division, No. 139, handed down on June 27th, 1935.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 16, 1935.

Hon. R. H. Williams,
Judge of Probate,
Marshall County,
Guntersville, Ala.

Redemption—Time allowed for—

Where sale for taxes made on November 20, 1933 to party other than the State, the owner and other parties authorized by the statute have three years from the date of sale in which to redeem.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of December 7, 1935 in which you state:

"Please give me an opinion on the following:

"On a tax sale made Nov. 20, 1933 for taxes 1932, has the owner two years or three years in which to make redemption."

I presume from your letter that the tax sale to which you refer was that in which the property was sold to a person other than the State. Upon this assumption, I call your attention to Act No. 77, approved March 20, 1933, Acts Special Session 1933, page 74, which provides in part:

"Real estate sold for taxes and purchased by the State may be redeemed at any time before the title passes out of the State or, if purchased by any other purchaser, may be redeemed at any time **within three years from the date of its sale** by the owner, etc."

This Act was approved March 20, 1933 and you state your sale was made on November 20, 1933. The Act therefore controls, and the party has three years to redeem.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 16, 1935.

Hon. R. E. Adams,
Judge of Probate,
Escambia County,
Brewton, Alabama.

Poll tax—exemption from.

A person who served in the Student Army Training Corps of the University of Alabama between April 1, 1917 and November 11, 1918, and holds an honorable discharge from the United States Army is exempted from the payment of poll tax.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of November 9, 1935, which follows:

"Please inform me if a person who served in the Student Air Training Corps of the University of Alabama, between April 1, 1917 and November 11, 1918, is exempt from the payment of poll tax, if honorably discharged therefrom."

The answer to your question must be in the affirmative. I call your attention to Section 194½ of the Constitution of Alabama which reads:

"No person who honorably served in the military or naval service of the United States between January 1, 1917 and November 11, 1918, shall be required to pay the poll tax mentioned in the Constitution of Alabama; such person shall be exempt from the payment of all poll taxes which

have accrued or which may hereafter accrue. This section shall be self executing and retroactive. The Judge of Probate shall issue certificates of exemption from the payment of such poll taxes to the persons entitled thereto, under such rules and regulations as may be prescribed by the Governor."

Speaking generally of Section 194½ of the Constitution, this office held:

"It is clear that all persons falling within the terms of the above Section of the Constitution are exempt from all poll taxes which have accrued or may hereafter accrue for the reason that the law, by its own provision, is self executing and retroactive."

Bienniel Report of Attorney General 1928-30, p. 103. ,

As to whether or not a person who served in the Student Army Training Corps of the University of Alabama between April 1, 1917 and November 11, 1918, is exempt from the payment of poll tax if honorably discharged therefrom. This office has held:

"Section 194½, poll tax amendment to the Constitution of Alabama, exempts those 'who honorably served in the military or naval service of the United States between January 1, 1917, and November 11, 1918.' etc.

"Whether or not the applicant for poll tax exemption certificate is entitled to same depends upon whether or not he was **in the United States army or naval service** between above said dates, and was honorably discharged therefrom. This is a question of fact to be determined by you in each case upon the evidence by the applicant.

"The student army training corps were part of the United States army, being established under statutory authority. The question is as to the character of enlistment. All regularly enlisted members of the students army training corps were in the army and were given army discharges.

"If the party in question was a member of the said S. A. T. C. between above said dates, and hold an honorable discharge from the United States army, he is entitled to his certificate of exemption from poll tax."

Biennial Report of Attorney General 1924-26, p. 72.

If the applicant in question cannot produce sufficient evidence for you to determine his status or the character of his enlistment, I would suggest that you communicate with the Adjutant General of Alabama, General John C. Coleman, who has a record of the soldiers who went from Alabama, alphabetically arranged, and who will be glad to give you the date in any particular case.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 16, 1935.

Hon. Cecil Deason, Solicitor,
Jefferson County Court of Misdemeanors,
Birmingham, Alabama.

Witnesses—License Inspectors—

License Inspector or his Deputy appearing as a witness in a prosecution for violation of the Revenue Laws begun by him is entitled to

his attendance as such witness when subpoenaed as such and who appears and proves his attendance.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of November 21, 1935, in which you state:

"In Section 2 of House Bill 118, providing for the License Inspector in all counties in the State of Alabama having more than one hundred and fifty thousand population, provides that the fees, charges and costs, authorized by law to be collected by the License Inspector, shall after the deduction of the salary of Three Hundred Dollars per month and also the salaries of the clerical help and all deputy License Inspectors, that all other fees, charges and costs shall be paid into the state and county treasury, one-third going into the county treasury and two-thirds going into the state treasury.

"In your opinion, I would like to know if the witnesses' fees collected by our clerk for the attendance of License Inspectors who appear in our court as witnesses whether or not this witness fee should be turned into the state and county treasury or whether or not the license inspector who makes the case is entitled to this fee."

In reply, I beg to advise that in an opinion found in the Biennial Report 1930-32, page 170, it was held that when sheriffs were subpoenaed as witnesses in a case they were entitled to their attendance as such. This opinion was reaffirmed in an opinion to Howard Kirby, Clerk of the Circuit Court of Etowah County, under date of July 12, 1933, a copy of which I attach.

It appears to me that the License Inspector, being in effect an officer not dissimilar to the Sheriff for the enforcement of the Revenue Laws, that the same reasoning would apply and that if a Sheriff may prove and get his attendance as a witness that a License Inspector under like conditions would be entitled to his attendance upon being subpoenaed and proving his attendance as a witness in any particular case.

I am of the opinion that the "fees, charges and costs authorized by law to be collected by the License Inspector" as used in the Todd Act refer primarily to those fees, charges and costs which go to the License Inspector by virtue of his office as License Inspector and usually are understood to be the $1.50 citation fee and the 15% penalty in cases of delinquency. I do not think that they refer to amounts payable to an individual as witness fees, even though such individual may happen to be a License Inspector or Deputy License Inspector.

Upon the authority of the foregoing opinions holding the Sheriff is entitled to his attendance as a witness, I am of the opinion that the License Inspector or his Deputy subpoenaed and appearing as a witness in a case and who proves his attendance is entitled to such attendance as a witness and that such witness fee should not be paid into the State and County Treasury but should be paid to such witness.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 16, 1935.

Mrs. M. D. Holman, Chairman,
Board of Registrars for Sumter County,
Livingston, Alabama.

Voter—Registration.

Residence of one year in county required before one is entitled to register.

Opinion by Assistant Attorney General Small.

Dear Madam:

You request my opinion as follows:

"I am writing to ask that you give me an opinion in regard to certain persons "registering" for the purpose of voting in our county under the following circumstances and conditions; viz.:—

"John Doe was born and reared in Sumter County, he is registered and maintains his place of residence here, he votes here, but has not maintained a home here for many years, his place of employment is in another county, while following his vocation in this other county, he has married a resident of this county, who is a qualified voter there, has maintained her place of residence there before and after marriage, to our personal knowledge she has never been a resident of Sumter County, Alabama.

"Is she entitled to register in Sumter County, Alabama."

In reply I wish to advise that in my opinion, under the facts stated in your letter, your question must be answered in the negative. This office has repeatedly held that one must live in a county one year before they are entitled to register or to vote. I refer you to following opinions rendered by this office and the authorities therein cited.

Biennial Report Attorney General 1928-1930 p. 694
Biennial Report Attorney General 1926-1928 p. 337

(Note: This opinion is directly in answer to your question.)

Opinion to Hon. W. W. Hill, Judge of Probate, Montgomery, Ala., rendered Sept. 12, 1935, quoted in office edition, Book 6-A, page 150-A.

Opinion to Hon. Thos. R. Farris, Chairman Board of Registration, Montgomery, Alabama, rendered December 10, 1931, office edition, volume 7, page 168. Opinion rendered to Hon. J. A. Williams, Circuit Clerk, Chambers County, LaFayette, Alabama, on January 11, 1932, reported in office edition, volume 8, page 97.

I enclose copies of the last three named opinions for your convenience. The first two cited opinions are found in the public volumes as indicated.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 17, 1935.

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Subsection 11 of Section 6755 of the Code, as amended by Acts 1933, page 201, Act No. 184, authorizes the Court of County Commissioners to compromise a claim against an official set up in the report of the examiner of Accounts where the same is of doubtful collectibility.

Opinion by Assistant Attorney General Bibb .

Dear Sir:

I wish to acknowledge receipt of your letter of October 3, 1935, as follows:

"Please advise as to the authority of the Court of County Commissioners to compromise a claim against an official that was set-up in the report of the Examiner of Accounts."

The statute here pertinent is Subsection 11 of Section 6755 of the Code, which as amended by Acts of 1933, page 201, Act No. 184 authorizes the Court of County Commissioners:

"11. To compromise on such terms as they may deem just, all doubtful claims in favor of counties, when such claims arise on account of monies, heretofore paid in good faith, by order of such courts, or in any case where they deem it to the best interest of the county."

This authority is not contrary to Section 100 of the Constitution, and in my opinion is sufficient to authorize the Court of County Commissioners to compromise a claim against an official that may be set up in the report of the Examiner of Accounts, where such claim is of doubtful collectibility. This amendment by its obvious terms modifies very materially the strict and technical interpretation placed upon a prior provision of the statute in Mobile County v. Williams, Judge, 180 Ala. 639, 61 So. 963. This is obviously a generalization, and the facts in each particular case will have a very substantial bearing upon its proper solution, certainly in the application of the broad discretion lodged in the Court of County Commissioners.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 17, 1935

Mrs. Jessie W. Nunnelee,
Chairman, Board of Registrars,
Montgomery County,
Montgomery, Alabama.

Elections—Poll list should be purged of those registered before reaching twenty-one years of age regardless of date of said registration. Poll list not invalidated because it contains names of some not legally registered.

Opinion by the Attorney General.

Dear Madam:

I have your letter of December 9, 1935, which reads as follows:

"Referring to your opinion of September 12, 1935 to Judge of Probate, W. W. Hill of Montgomery County, declaring all registered voters, who registered under rulings of former Attorney General before they were actually 21 years of age were illegally registered.

"Please advise me how far back your ruling covers, so that I may know where to start purging the list of such voters. Also advise me as to whether or not the list of voters is illegal until the purging has been completed'.'

In answer to your first inquiry, I am of the opinion that all persons who registered before reaching the age of twenty-one years were not legally registered and should be stricken from the poll list regardless of the date of said registration.

The former opinions of this office dealing with the age requirements for registration were based on constitutional provisions. (Constitution of 1901, Sections 177, 178 and 181.) See **opinions to Judge of Probate, Montgomery County,** on September 12, 1935 and February 18, 1935; **Biennial Report of Attorney General,** 1928-1930, pp. 649 and 672; **Biennial Report of Attorney General, 1922-1924, p. 299.** Said opinions held that under the requirements of the Constitution one must be twenty-one years of age at the time of registration in order to be eligible for registration. The opinion to the Judge of Probate of Montgomery County on September 1, 1935, held that those who were registered before reaching twenty-one years of age should be stricken from the poll list in the manner provided by law.

An Act of 1915, providing for the registration of voters, expressly provided for the registration of persons who would become twenty-one years of age before the registrar will convene again and before another election in the county. (Verbiage of act). (Acts 1915, p. 239, Section 22). This Act was repealed by Acts 1920, p. 124, which repealing act made no provision for the registration of minors. I am of the opinion that this Act was repealed because of its unconstitutionality.—**Biennial Report of Attorney General,** 1928-1930, p. 649; **Biennial Report of Attorney General,** 1922-1924, p. 299.

Since the age qualification for registration is governed by the Constitution, statutory enactments in conflict therewith are of no force and effect. The 1915 Act, supra, being unconstitutional, has no bearing on the question involved.

The premises considered, I am of the opinion that all those persons who were registered before reacihng the age of twenty-one were not legally registered and should be stricken from the poll list in the manner required by law. This is true regardless of the date of said registration. In other words, there is no time limit involved and the opinion referred to in your letter is applicable to all cases.

I am of the opinion that your second inquiry should be answered in the negative. The mere fact that the poll list contains the names of some who are not legally registered does not invalidate the whole list.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 17, 1935.

Hon. John I. Smith,
Tax Collector, Etowah County,
Gadsden, Alabama.

Taxation—Exemptions. H. B. 479, approved October 22, 1932, granted exemption from taxation of property of Educational Institutions acquired by foreclosure of mortgages, for period of three years.

Revenue Act of 1935 repeals H. B. 479, approved October 22, 1932, but said act exempts property assessable as of Oct. 1, 1934, though such property is subject to assessment as of October 1, 1935.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of December 6, in which you state:

"We have an assessment against Judson College for the tax year 1935 on which they claim exemption as follows:

" 'This property is exempt from taxation as provided by House Bill No. 479 approved October 22, 1932 as shown on page 126 of the 1932 Extra Session of the Legislature of Alabama; said property being owned by a chartered institution of learning authorized to grant the usual college degree, and obtained by mortgage foreclosure on a loan heretofore made.'

"Kindly advise if we are to collect the 1935 taxes assessed in the name of the above named College."

In reply, I call to your attention Section 374 of the Revenue Act of 1935 which provides:

"Section 374. The exemptions from ad valorem taxation granted in this Act are hereby declared to be exclusive and any laws or parts of laws, general, special or local granting or attempting to grant any exemption from ad valorem taxation, except as in this Act provided, are hereby specifically repealed."

The effect therefore, is to repeal H. B. 479, approved October 22, 1932. Of course, if the property is being actually used for school purposes, it is exempt under Section 2 (a) of the Revenue Act of 1935. However, I am in some doubt as to the meaning of your phrase "we have an assessment against Judson College for the Tax Year 1935." If you mean that the property is assessed as of October 1, 1935, making the taxes payable October 1, 1936, then Section 374 would repeal H. B. 479. Too, by its own terms said Act expires by operation of law as of such date as to the assessment of October 1, 1935, and future years.

If, on the other hand, you refer to the taxes which might be payable October 1, 1935 based on an assessment as of October 1, 1934, I advise that in my opinion no such taxes are due for the reason that on October 1, 1934 the assessing date, the property was exempt and no assessment could be made, and without an assessment no taxes become payable.

In an opinion to Hon. L. A. Whetstone, Tax Assessor of Jefferson County, under date of September 18, 1935, I held H. B. 479 constitutional. This being

so, the property was exempt from assessment as of October 1, 1934 when, but for the Act, it should have been assessed. I attach copy of said opinion.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 19, 1935.

Hon. John Brandon,
State Treasurer,
Capitol.

Checks made payable to the State Treasurer for the payment of taxes must be paid at face value by the paying bank.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of December 14th in which you state:

"Please advise if checks made payable to State Treasurer for the payment of taxes must be paid at face value by paying bank."

In reply, beg to advise that your inquiry involves the determination of two questions: Taxes which are payable directly through State Agencies such as The Tax Commission, and those which are collected by the Probate Judge or the Tax Collector and are remitted by him at the time of making his monthly or other reports.

As to the first inquiry, I think this is fully answered by the case of City of Enterprise vs. Rawls, 86 So. Rep. page 374 in which it was said:

"Taxes are not debts. They do not result from contractual obligations; they are contributions required for the support of the government. Unless qualified in the text, the term 'taxes' or 'tax' is used in the sense of money—an exaction to be alone discharge in money."

This case was cited and quoted approvingly in an opinion found in Biennial Report of the Attorney General 1930-1932, page 194, and likewise in an opinion found in the same Biennial Report at page 850. Section 100 of the constitution provides that no obligation or liability held or owned by the State or by any county or municipality shall ever be remitted, released, postponed or in any way diminished by the legislature. As the deduction of an exchange charge would amount to a diminution of the taxes due to the State, I doubt if even legislative authority would authorize such action. However, there is no act of the Legislature authorizing the deduction by the Bank of such an amount, and if any check should be accepted, having such deduction, the amount of taxes due would not be satisfied pro tante.

The second question involved in your inquiry is more difficult. Presumably the full amount of taxes due have been paid the tax collector, probate judge or other collecting officer and the question arises: Is there any authority for allowing the bank to deduct an exchange charge on checks given by such tax collector or probate judge in making his remittance to the State It seems to me that the case of Enterprise vs. Rawls would still apply and that the payment of money means the actual payment of the amount due into the State Treasury.

However this may be, the prior act, Section 3085 of the Code, provides that the tax collector must pay to the State Treasurer **"all State taxes** then due from him to the State", and a similar provision as to the county. The same provision amplified is to be found in Section 192 of the 1935 Revenue Act, which provides that the tax collector must pay to the State Treasurer **"all State taxes,** interest and/or penalties then due from him to the State", and a similar provision as to the amount due the counties and schools. The probate judges are required by Section 373 of the Revenue Act of 1919 to remit "within five days after the end of each month to the State Treasurer at the expense of the State **all money** received by him for licenses belonging to the State, etc." The same provision is found in Section 365 of the Revenue Act of 1935 except that the five-day provision is changed to ten days. It is to be noted that all of these provisions provide for the remitting of **all taxes or all monies** received for licenses. Taking the language as given, it requires that there be paid into the State Treasury the entire amount due except the commissions which are allowed by law.

It is true that in the Probate Judges' provision there is the line stating 'at the expense of the State" and likewise as to the Tax Collector, we have Section 3053 of the Code of 1923 providing that he (the Tax Collector) "shall also be allowed the actual costs of remitting all collections to the State Treasurer, the same to be paid out of the treasury or to be credited to the collector upon his making his annual settlement with the State Auditor." This provision is repeated as Section 163 of the Revenue Act of 1935. It does not seem, in view of the fact that these officers must remit all the taxes and **all the** money received for licenses and as taxes are payable in money, that there can be any authority for the payment of a part of the taxes or a part of the money received for licenses to a bank or other remitting agency. The effect of this would be to reduce the amount of taxes which the State receives. While the terms "at the expense of the State" or "the costs of remitting" might seem to authorize the payment of such a charge, it is my judgment that the same was not contemplated but that if those terms are to be given their proper meaning, they are to be given a strict construction and apply to the actual expense or costs of remitting including perhaps postage or some such nominal expense. I, therefore, hold that there is no authority, in the absence of a statute, for a bank to make a charge against a check given in payment of taxes, but that the same must be paid in full.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 23, 1935.

Hon. Robert R. Moore,
State Commissioner of Labor,
Montgomery, Alabama.

Statutes—Section 6, unemployment compensation law (Act No. 447, approved September 14, 1935) construed.

Unemployment benefits—"suitable employment", as condition to eligibility for benefits, defined.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion dated December 12, 1935, with enclosure.

Your request involves an interpretation of the following provision of the unemployment compensation law (Act No. 447, approved September 14, 1935):

> "Section 6. (g) Refusal of Suitable Employment. If an otherwise eligible employee fails, without good cause either to apply for suitable employment when notified by the employment office, or to accept suitable employment when offered him, he shall thereby become ineligible for benefits for the week in which such failure occurred and for the three next following weeks. 'Suitable employment' shall mean any employment for which the employee in question is reasonably fitted, which is located within a reasonable distance of his residence or last employment, and which is not detrimental to his health, safety or morals. No employment shall be deemed suitable, and benefits shall not be denied under this act to any otherwise eligible employee for refusing to accept new work, under any of the following conditions: (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (2) if the wages, hours, and other conditions of the work offered are substantially less favorable to the employee than those prevailing for similar work in the locality; (3) if acceptance of such employment would either require the employee to join a company union or would interfere with his joining or retaining membership in any bona fide labor organization."

and particularly subdivision (2) of subsection (g) of Section 6, supra.

In my opinion the meaning of this part of the Act is, that the employment shall not be deemed suitable, as a denial of eligibility for the benefits of the Act, if the wages, hours or other conditions of the work offered are substantially less favorable to the employees than those prevailing for similar work in the locality. The Act apparently fixes the conditions as to wages, hours and working conditions in the conjunctive. A literal interpretation of the clause might lead to the conclusion that in order to be eligible for the benefits of the Act the employee is required to prove that each of the three conditions is substantially less favorable to him than those prevailing in the locality. But a literal interpretation is not always a safe guide in arriving at the legislative intention.

One of the cardinal principles of statutory construction is, that a literal interpretation which would defeat the manifest purpose of a statute will not be adopted if any other construction consistent with such purpose can be given to it. **Harrington vs. State** 76 So. 422, 200 Ala. 480. **Abramson vs. Hard,** 155 So. 590, 229 Ala. 2.

Obviously the intention of the legislature (which is to be gathered from the entire act) would be defeated if the clause in question should be interpreted strictly and literally to render an employee ineligible for the benefits of the Act if the work offered was substantially as favorable to him as to wages, as generally prevailed in the locality, but as to hours and other conditions, it was grossly unfavorable to him. **Cf. Porter & Co. vs. State,** 58 Ala. 66.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 23, 1935.

Hon. Solomon Baxter,
County Superintendent of Education,
Houston County,
Dothan, Alabama.

Schools—Notice of three mill tax election containing proviso limiting use of tax to specific public school purposes does not invalidate election although ballot contains no such limitation, and further does not, under facts stated, limit expenditure of the proceeds of the tax.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of December 10, 1935, together with other data, from which appear:

"In 1917 Houston County held a special election for the purpose of voting a three mill tax for public school purposes within the county for the years 1917-1918 to 1936-1937, inclusive. The petition for the election requested an election to be held to determine whether or not the County should vote a three mill tax for **public school purposes within the County.** Notice was published and the election duly held and the tax voted. However, there was a variance between the published notice of the election and the ballot used. Both provided that the tax levied was for **public school purposes within the county.** However, the notice contained the following additional proviso that was not included in the ballot: 'Said tax to be applied to the reduction of incidental fees and supplements, the employment of additional teachers where needed, and the extension of inadequate terms of the schools of the county.' "

In view of the above you request my opinion as follows:

(1) Would the variance above referred to invalidate the election?

(2) If not, could the proceds of the tax legally be pledged to the payment of the principal and interest on warrants issued by the County Board of Education for the purpose of financing the construction and equipment of school buldings within the county?

I am of the opinion (1) that the election is valid, and (2) that the proceeds of the tax may be used "for public school purposes".

Since the holding of the election referred to, the Legislature has passed a validating act (Acts of 1931, page 97) which has been considered in the case of Johnson v. Rice, 227 Ala. 119, 148, So. 802, and another validating act (General Acts 1935, approved January 24, 1935) which has been construed in the case of Harmon et al. v. County Board of Education et al, 160 So. 687. I believe that under the authority of these Acts, as interpreted in these cases, the tax election in this case is valid.

The tax election being valid the question is then presented as to whether the expenditure of the funds is restricted by the words added by the Probate Judge. I am of the opinion that it is not so limited.

The question of notice affects the validity of the tax election, (Shanks v. Winkler, 210 Ala. 101, 97 So. 142) rather than the method of expenditure. This election was held under authority of a section of the constitution (Amend-

ment 3—Article XIX, Constitution of Alabama) which provides for the holding of elections to levy taxes "for public school purposes". This section further provides "that the rate of such tax, the time it is to continue and the purpose thereof" is to be submitted to the vote of the qualified electors of the County".

In "In re Opinions of the Justices" (147 So. 623), the Justices decided that where H. 53 provided "5%" in the Constitutional provision and "10%" for the ballot, that the latter was merely surplusage.

In the recent case of Harmon v. County Board of Education supra, the Supreme Court of Alabama held that the words, "three mills" as used in the notice had a well defined meaning and that this meaning was understood by the voters at the time they voted for the passage of the tax. In the present matter, three mill levies were being voted by counties in all parts of the State and I believe that the voters understood when they voted that the tax was to be used "for public school purposes" as provided in the constitutional provision authorizing the levy. The words of the Probate Judge in this case were not words of limitation but rather words of explanation, and the meaning of these words was in addition to the general "public school purposes" set out in the constitutional provision.

In the case of Shanks v. Winkler supra, which also involved the three mill levy, objection was made to the tax on the ground that the petition designated the tax for "school purposes" and not for "public school purposes". The court said "these objections should have been avoided but our opinion is that the office of the petition and the character of the fund to be raised by the proposed tax are too clear to admit a very serious doubt".

I am of the opinion, therefore, that the tax may be used for any public school purposes and that the uses to which you wish to apply this tax are within the purview of this term.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 23, 1935.

Hon. Frank N. Julian,
Superintendent of Insurance,
Capitol.

Dear Sir:

1. The duty placed on the Superintendent of Insurance to examine every domestic insurance company at least once in every two years, by Section 8334 of the Code is mandatory, and a failure to do so without legal excuse would subject him to removal from office for cause.

2. The Bureau of Insurance, created by Sections 8319, et seq. of the Code, operates directly from and out of the funds collected by it, as provided in Section 8370 and related statutes, and is not subject to the general provisions of the Budget and Financial Control Act of 1932.

3. The necessary expenses of examining domestic insurance companies as required by Sections 8334 and 8336, and the traveling expense incurred by the Bureau of Insurance as reasonably necessary to the proper enforcement of the insurance laws are payable from the funds collected

by the Bureau of Insurance unaffected by the provisions of the General Appropriation Bill, approved September 6, 1935, the appropriations therein made to the Bureau of Insurance being as provided by Section 21 of the Budget Act, in addition to the revenues or receipts of the Bureau.

Opinion by Assistant Attorney General Bibb.

I wish to acknowledge receipt of your letter of November 6, 1935, which is as follows:

"By Section 8334 of the Code it is required that, 'at least once in every two years, the Insurance Commissioner shall personally or by his deputy, together with some competent person appointed by him for that purpose, visit each domestic insurance company and examine its affairs, especially as to its financial condition, etc.' Section 8336 provides that for such purpose the Insurance Commissioner may call upon the Governor for the services of an examiner of public accounts, and may designate or appoint some qualified actuary and assistant to assist in such examination and shall fix a reasonable compensation, to be approved by the Governor for such actuary and assistant, upon a proper per diem basis to be paid by warrant of the State Auditor drawn upon the State Treasury.

"It is, of course, common knowledge that while the services of an examiner of public accounts are useful in certain of the routine work of an examination, in the conduct of the character of examination contemplated and required by Section 8334, the accounting problems and computations involved require the services of a qualified actuary.

"By Section 8319 the Bureau of Insurance is charged with the administration of all laws relative to insurance, insurance companies and their agents, including the collection of all appropriate licenses and privilege taxes. The Bureau collects licenses and taxes annually in an amount from three-fourths to one million dollars. Section 8370 of the Code provides:

" 'The State Auditor shall pay, upon vouchers approved by the Governor, out of this insurance fund alone, the expenses of the Insurance Department.'

"In the General Appropriation Bill Approved September 6, 1935, a certain amount is appropriated for the required statutory salaries of the Bureau, and, among other specific items, is an item of appropriation in a certain sum for 'general expense'. For your information, regular and approved items of general expense now set up and charged, or chargeable, to the general expense fund are sufficient in amount to equal the sum appropriated, exclusive of any charges as for examination of domestic companies. There is also set up in the General Appropriation Bill an item for traveling expense in a certain small sum. In the course of necessary duties in collecting taxes as distinguished from the making of examinations the Superintendent or his deputy must travel to a substantial degree both within and without the state.

"In view of the necessity of getting these examinations started immediately if they are to be finished in the time required by law, I request your opinion on the following questions:

"I.—Under Section 8370 of the Code, is the proper expense incurred in conducting the examinations of domestic insurance companies re-

quired by Sections 8334 and 8336 to be charged to and paid out of the specific funds collected by the Bureau of Insurance, upon voucher approved by the Governor?

"2—Where the proper administration of the laws relating to insurance companies and their agents, necessitates the incurring of traveling expenses in an amount greater than that set up in the General Appropriation Bill for this Bureau, does such amount so set up control in all events, or is the amount reasonably necessary to be incurred for traveling expense specifically chargeable to the funds collected by the Bureau, and payable therefrom upon voucher approved by the Governor irrespective of the particular amount set out in the General Appropriation?"

The duty of examining every domestic insurance company, especially to determine its financial condition, ability to fulfill its obligations and whether it has complied with the law, at least once in every two years imposed upon the Superintendent of Insurance by Section 8334 of the Code, referred to above, is in my opinion mandatory and a failure to do so, without legal excuse, would subject the Superintendent of Insurance to removal from office for cause.

The necessary expense, therefore, of performing this required duty, a method of performing which is indicated by Section 8336 of the Code, constitutes a proper charge against any appropriate funds available for expenditure by the Bureau of Insurance.

By Section 8319 of the Code it is provided:

"Bureau of insurance created.—There is created in lieu of the department of insurance, a bureau of insurance for the State of Alabama, separate and distinct from any other department or office of the said State of Alabama. The bureau of insurance is charged with the administration of all laws, now in force, or which may hereafter be enacted relating to insurance, insurance companies, associations, exchanges and societies, and their agents and representatives doing business in the State of Alabama."

By Section 8369 of the Code it is provided:

"Licenses, fees and charges.—The insurance commissioner shall collect from each company filing copy of charter or deed of settlement and financial statement two hundred dollars, and the same amount with each annual statement thereafter for the privilege of carrying on its business in the State of Alabama; for each certificate or renewal thereof to an insurance agent or solicitor, four dollars; for each seal of office, with certificate, one dollar; for copies of any paper on file or deposit with the insurance commissioner, or in his office, ten cents per hundred words. These fees and charges shall control except as they may from time to time be changed by the revenue laws of this state."

By Section 8327 it is provided that the Superintendent of Insurance shall perform all duties of supervision and control of insurance companies and collect all taxes, fees and penalties provided by law.

By other provisions of the various prior revenue acts (Acts 1927, p. 139, and prior revenue acts) and under the provision of the General Revenue Act, approved July 10, 1935, certain privilege taxes upon domestic and foreign insurance companies, based upon various percentages of gross premium re-

ceipts, are payable to and collectible by the Superintendent of Insurance. It is also his duty to collect the Fire Marshal's tax, levied by that Act, and its predecessors.

Section 8370 of the Code provides, "The State Auditor shall pay, upon vouchers approved by the Governor, out of this insurance fund alone the expenses of the insurance department."

Section 8331 of the Code provides that "The Superintendent of Insurance shall make settlement with the State Treasurer as now, or hereafter, required by law."

Your inquiry, then, resolves itself into the question whether Section 8370 was repealed and the effect of related statutes referred to modified, as regards the operation of the Bureau of Insurance, by the provisions of the Budget and Financial Control Act, Acts 1932, pages 35, et seq.

In my opinion Section 8370 of the Code was not repealed by the Budget and Financial Control Act, and under the authority of this and related statutes the funds collected by the Bureau of Insurance are subject to the payment of its proper expenses as a first and prior charge against such receipts, any balance left over becoming a part of the General Fund. The Budget Act itself shows that it was not the intention of the Legislature thereby to repeal Section 8370. In this regard, Section 21 of the Budget and Financial Control Act provides, among other things, that "all appropriations made to any department, institution, bureau, board, commission or other State agency as receive or collect moneys available for expenditure by them, are declared to be in addition to such receipts and such appropriations are to be available as and to the extent that such receipts are insufficient to meet the costs of administration, operation and maintenance of such departments, institutions, commissions or other agencies. * * * "

Essentially this same question was treated by an opinion of this office to Hon. J. H. Hard, Jr., State Comptroller, on May 1, 1933, Biennial Reports of Attorney General 1932-1934, p. 220, wherein in dealing with the effect of the Budget and Financial Control Act upon the various departments and branches of the State Government, it was said,

> "There are certain other departments of the State Government which from the information before me, **are charged with the collection of fees and commissions on which such departments operate.** It would be unwise to curtail the activities of these departments of government which are performing a service for the people so long as they operate on the fees and commissions collected by them. * * * **Among such departments I might mention, are * * * the Insurance Department.** In most instances these departments supply monies for the general fund of the State over and above their running expenses."

Clearly under the provisions of the statutes and acts above quoted and referred to, as they existed at the time of passage of the Budget and Financial Control Act in 1932, the funds collected by the Bureau of Insurance were available for expenditure by it upon vouchers approved by the Governor. It it clear that the purpose of the statutes above quoted and referred to was that the Bureau of Insurance should operate directly upon and from such fees or monies as it might collect, without in any way burdening the General Fund. Any balance remaining over and above its proper operating expense, of course, becomes a part of and an addition to the General Fund. Section

8331. This manifest intention is further borne out by the fact that a search of the Acts of the Legislature, as far back as those of the General Session of 1909, shows that at no time from that date to and including the date of passage of the Budget and Financial Control Act was there ever made an appropriation by the State of funds to the Bureau of Insurance for its operation. Since the Code of 1896 the exact language of Section 8370 of the present Code has been perpetuated in each successive enactment without change and since that time the Bureau of Insurance has in fact operated solely on and out of its own receipts. That this status was not intended to be affected by the 1932 Act expressly appears from further provisions of Section 21 of the Act, which are, among other things:—

> "* * * And provided further that this act shall not apply * * * to the receipts of any department, institution, bureau, board, commissoion or other state agency (except the Department of Agriculture and Industries and State Board of Agriculture) **to which no appropriation is made by the State.**"

That this situation was expressly deemed to be continued unchanged by this act is further manifest from the provisions of said Section 21 of the Act which expressly provides that any appropriations thereafter made to the departments or bureaus enjoying such status as the Bureau of Insurance should **be in addition to such receipts, and available to the extent that the receipts of such departments or bureaus are** insufficient to meet the costs of administration, operation and maintenance of such departments.

So, then, the general provisions of the Budget and Financial Control Act expressly do not apply to the Bureau of Insurance. Nor, in my opinion, does any provision of the General Appropriation Act of 1935, approved September 9, 1935, in making certain general appropriations for the various items of expense of the Bureau of Insurance change its essential status or limit the necessary items of expense of the Bureau to the figures therein set up. Since the Bureau of Insurance operates upon its receipts, and is not affected therein by the Budget and Financial Control Act, the appropriations made to the Bureau in the 1935 General Appropriation Act are in addition to the receipts of the Bureau and available as and to the extent that such receipts may be insufficient.

In keeping with the foregoing, the answers to your specific questions, in my opinion, are as follows:—

1. The proper expense incurred in conducting the examinations of domestic insurance companies required by Section 8334 in the manner set out in Section 8336 is chargeable to and payable out of any funds collected by the Bureau of Insurance, upon voucher approved by the Governor, unaffected by the Budget and Financial Control Act of 1932 or the General Appropriation Act of 1935.

2. The traveling expenses incurred in the manner provided and limited by Acts 1933, p. 81 Act No. 87 and reasonably necessary to the proper enforcement of the law relating to insurance, insurance companies and their agents, are likewise so payable out of such funds, unaffected as to aggregate amount by the Budget and Financial Control Act of 1932 or the General Appropriation

Act of 1935, assuming that the Bureau collects sufficient funds actually to cover all proper expense of operation.

I trust that this suffices to answer your questions.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 27, 1935.

Hon. J. W. Hamilton,
Tax Collector, Jefferson County,
103 Court House,
Birmingham, Alabama.

Taxation—Appeals from Board of Review.

1. Appeals from ad valorem assessments made for the assessing year beginning October 1, 1934 and in which assessments were completed and appeals taken prior to October 1, 1935 are governed by Section 61, Acts 1923, page 152.

2. Where taxes are paid in cases in which appeals are pending, the same should be paid under protest and the officer receiving the same should remit to the various agents in the manner authorized and required by Section 380 of the 1935 Revenue Act.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of December 18th in which you state:

"Please give me your opinion as to whether or not Section 78 of House Bill 324—Revenue Bill, Regular Session, 1935, applies to appeals taken from the valuations of the Boards of Review for 1935 tax. If your opinion is in the affirmative shall I as tax collector, in cases that are settled prior to January 1, require the taxpayer to pay the full amount of tax assessed and petition the various governmental agencies for a refund of taxes paid in excess of the amount fixed by the Circuit Court, or shall I accept a certified copy of the judgment of the Circuit Court fixing the values, and collect on same, taking an error on my books for the amount of reduction given, as has been the custom in the past, under Section 191—1929 Revenue Code.

"If, in your opinion, Section 78 does not apply to the appeals taken prior to September 1, shall I hold payments made on such appeal cases in a trust fund pending the outcome of the appeal, as has been done in the past, or shall I remit such payments along with other taxes as provided for in said Section?"

"I would appreciate your opinion on these questions at the earliest possible moment as there are around 200 appeal cases being settled in this county that I must handle within the next few days."

In reply I advise that under the first question involved in your request for opinion, to-wit: Where the case is settled in Circuit Court and you have an order of the Circuit Court fixing the taxes prior to the time such taxes become delinquent, should you accept the amount due as shown by such de-

cree and take error for the amount of reduction, it seems that whether you are operating under Section 61 of the Revenue Act of 1923 or Section 78 of the Revenue Act of 1935, that it would be proper for you to accept the order of the Circuit Court. This is the final determination of the matter, in the absence of an appeal, and presumably the Circuit Court will not certify to you any cases in which an appeal has been taken. This is clearly recognized by Section 78 of the 1935 Act when it provides that "When an appeal is taken, the taxpayer shall pay the taxes due as fixed for assessment for the preceding tax year **before the same become delinquent.**" Naturally, if the case is settled before the taxes become delinquent, there is no occasion for the payment of anything but the actual amount due as shown by the decree of the court.

In cases in which the appeal has not been settled prior to the time the taxes become delinquent, I am of the opinion that the taxes based on the preceding year's assessment must be paid. Section 61 of the Act of 1923 provides in part:

> "Provided, however, that no appeal shall suspend the right of the State and counties to collect from the taxpayer the taxes due upon his property as fixed for assessment for the preceding tax year and the taxpayer shall, when the taxes are **due**, pay all taxes due at the assessed value of the preceding year."

The 1935 Act provides in part as follows:

> "When an appeal is taken, the taxpayer shall pay the taxes due as fixed for assessment for the preceding tax year before the same become delinquent and upon failure to do so, the court, upon motion ex mere motu, must dismiss the appeal unless at the time of taking the appeal the taxpayer has executed a supersedeas bond with sufficient sureties to be approved by the Clerk of the Circuit Court in double the amount of taxes payable to the State of Alabama, conditioned to pay all taxes, interest and costs due the State, county or any agency or subdivision thereof, such appeal shall be preferred cases."

Presumably the appeals to which you refer were only made for the assessment year beginning October 1, 1934 and in which the assessment was made and the appeal was taken before the effective date of the 1935 act. Therefore, in my judgment Section 61 of the 1923 Act would control and the taxpayer is required to pay and the tax collector is required to collect the taxes due on the property based on the assessment for the preceding year. See **State vs. M. & O. R. R. Co.** 134, So. 91.

Your third question pertains to the disposition of the taxes so collected pending such appeal. Section 380 of the 1935 Revenue Act provides:

> "SECTION 380. Whenever any money for taxes paid to any officer authorized to receive or collect same is paid under protest, such officer shall distribute to the various governmental agencies the proportion due such governmental agencies in the manner and at the times provided in this Act, and at the time of such distribution, shall note the fact that such payment was made under protest, and the Treasurer or custodian of funds of such governmental agency, shall in giving his receipt therefor, note that such tax was paid under protest. Any tax collector or other officer authorized to receive and collect taxes noting such fact, shall not be personally liable for such payments should such taxes ultimately be held illegal or excessive."

This section is to be read along with Section 78 which specifically provides for the manner of refunds. It is, therefore, my judgment that any monies paid to you in cases in which appeals are pending, should be paid to you under protest and that it is your duty, at your regular times for making remittances to the various agencies entitled to such taxes, to remit such amounts paid under protest and to note in each case and to each agency the name of the party making the payment and the fact that such payment was made under protest.

I have also your letter of December 19th, stating:

"Supplementing my letter of yesterday asking for an opinion on Section 78 of the new revenue bill, I would like to ask for your opinion on one other phase of the tax status on appeal cases. For instance, A assesses his tax for the tax year of 1935 and appeals same to the Circuit Court, then after January 1 and before he has paid his tax he secures a reduction in said court. Shall I, under the provisions of Section 78, require him to pay the amount of taxes that he was originally charged with, and have him petition for refund or shall I do the sensible thing of accepting certified copy of court order and allow him to pay net amount due under such order?

"I shall appreciate your giving me your opinion on this phase of the question in addition to the questions raised in my letter of yesterday."

The reply to this is, I believe, incorporated in the foregoing opinion, but answering your question specifically, I advise that, in my opinion, if at any time prior to the actual payment of taxes you receive the decree of the Circuit Court fixing the amount of the assessment and the taxes due, that you should collect such amount and take error for any excess or collect any additional amount shown to be due by such degree. Of course, it is the duty of the Tax Collector immediately after January 1st to make demand and proceed to the collection of all taxes.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 27, 1935.

Hon. J. A. Keller,
State Supt. of Education,
Capitol.

Schools—Releasing of warrant issued from rural schoolhouse erection, repair and equipment fund after same should have been cancelled.

Opinion by Assistant Attorney General Screws.

Dear Sir:

This is to acknowledge receipt of your letter of December 12, 1935, which is as follows:

"In 1931 an application for state aid was made by the Autauga County Board of Education in which $353.33 was put up locally and $176.66 state aid requested in payment of indebtedness on the erection of the Pine Level School building in that county. The state warrant in question expired under the one year limit placed on same by the rural

school building law, but was reinstated under a ruling of the Attorney General dated June 25, 1934.

"For your information, I am attaching a letter from the superintendent of Autauga County, Mr. James N. Castleberry, together with other correspondence bearing on the matter. Mr. Castleberry's letter, I think you will find, gives the entire history of the transaction. It seems that the bank in which the local funds were deposited failed, and the county board of education, according to Mr. Castleberry's statement, paid off the entire obligation, which was $530.00, representing the total of local and state funds, for the sum of $204.65, which was less than the local funds originally put up.

"We have on file in this office a certificate from the county treasurer of school funds, Autauga County, certifying to the payment of the $204.65 on this obligation.

"Please let me know if under the circumstances stated above, and in the light of the information given in Superintendent Castleberry's letter, I would be justified in releasing the state warrant amounting to $176.66."

It appears from the attached correspondence of Mr. Castleberry, County Superintendent of Education of Autauga County, that application for extension of the warrant in question was not made due to the fact that he was informed that the one year limitation did not apply to indebtedness warrants as it did to building warrants.

In answer to your inquiry, it is my opinion that you would have no authority to release the State warrant in question.

In dealing with warrants issued from the rural schoolhouse erection, repaid and equipment fund (Acts 1931, p. 435; Acts 1932, p. 306), this office, in an opinion rendered to the State Superintendent of Education on September 30, 1931 (Biennial Report of Attorney General, 1930-1932, p. 456), held as follows:

"When the State warrant is issued and placed in the hands of the County Treasurer of School Funds, the local matching funds should be immediately applied to payment of the debt, whereupon, the State authorities being satisfied that all provisions of law and the regulations of the Department of Education have been fully met then the State authorities release the warrant to be cashed, and the warrant must be immediately applied on the debt. The warrant must be promptly used as above set forth. If not used within the time prescribed by the School Code as for State Aid warrants for building purposes, etc., it may be cancelled under the same conditions. (See Section 385, School Code, 1927)."

It will be seen from the above that the time limitation provided for in Schedule 385 of the School Code, is applicable to indebtedness warrants as well as building warrants. It is stated in your letter that under the ruling of the Attorney General dated June 25, 1934, the warrant in question was reinstated. Said opinion did not authorize the reinstatement of the warrant in question, but merely authorized the reinstatement of a warrant that was erroneously cancelled. The warrant in question did not seem to have been erroneously cancelled. The warrant in question should have been cancelled under the provisions of Section 385 of the School Code of 1927, supra.

Moreover, in the instant case, it appears that the indebtedness was compromised for an amount less than that required to be put up by the county. The State warrant would have to be applied to the payment of the indebtedness and if the indebtedness is paid the State warrant could not be so applied. Therefore, the State warrant could not be used in the manner provided by law.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 30, 1935.

Hon. Henry S. Long, President,
State Tax Commission,
Capitol.

Licenses: Chain Store—

1. Person taking out a license required to sell specific article likewise liable for store license if operating a store.

2. Store licenses are transferable if the same business is actually transferred.

3. Rolling stores are not subject to the store license levied by Chapter 3, Article 13 of the 1935 Revenue Act.

4. Particular questions of fact discussed.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"Please advise me if, in your opinion, the following listed cases are liable for store licenses under Chapter 3 of Article 13, Acts of the 1935 Legislature.

"1. Shall a person, firm, corporation, copartnership or association be required to secure a store license, to open, operate, maintain or control a store, or mercantile establishment from which goods, wares or merchandise of any kind are sold either at retail or wholesale that already has in his or their possession a State license to sell a particular thing, said person, firm, corporation, copartnership or association selling nothing else except that named on State license?

"2. Are Store Licenses that are issued to a certain person, firm, corporation, copartnership or association, transferable to another person, firm, corporation or association at the location for which license was originally issued? The second business being of the same class or, of an entirely different nature.

"3. Does a store, commonly known as a Rolling Store require a Store License? By Rolling Store we mean a wagon or truck that carries a more or less complete line of goods, wares, or merchandise and that travels over the country selling at retail to customers.

"4. Are Store Licenses that are issued for a certain location transferable to another location? Example....A store opens at a certain loca-

tion. The furniture and fixtures are soiled and worn and the stock is more or less depleted. The owner acquires a new and larger location separate and distinct from the old, with improved furniture and fixtures and a larger and more complete stock of wares. Does this new location require a store license of its own?

"5. A person, firm, corporation, copartnership or association owning a business, also owns another business of an entirely different nature under the same roof. There is no similarity what-so-ever between the class of goods, wares or merchandise sold from the two places. Each business has its own separate name and the advertising is done separately. For the convenience of the customers there is an entrace between the two places on the inside of the building. Do both of these places of business require a separate store license?

"6. A person, firm, corporation, copartnership or association operates a store-house separate from their business from which goods, wares, or merchandise are displayed for sale and from which, sales are sometimes made. Is this store-house liable for store license?

"7. Are leased departments in department stores liable for store license? Example . . . . A shoe manufacturer will lease certain space in a department store for the sale of shoes and his business will be separate and distinct from the other departments. He will either pay a fixed sum for rent and carry his accounts in his own set of books or, he will have the department carry his accounts, the department store retaining a certain percentage amount from the sales consummated, for their own use as payment for this service and rent."

The answer to question 1 is to be found in Schedule 155.4 of the Revenue Act of 1935, which prescribes:

"The license fee herein prescribed shall be paid annually and shall be in addition to the filing fee prescribed in subsections 1 and 3 of this Schedule and shall be in addition to all other license or privilege tax now or hereinafter levied."

This is further emphasized by Section 357 which provides:

"Whenever in this Act two or more licenses on the same business or occupation are required, it is hereby declared to be the intention of the Legislature that all such licenses as are herein levied shall be collected without credit or offset except where specific provision is made therefor."

While it is true that in an opinion rendered to the State Tax Commission subsequent to the enactment of the original Chain Store Act of 1931, this office held that if a person took out a special license to do a particular thing and engaged in no other endeavor or sold no other article than that for which special license was produced, he was not liable for the store license, such opinion was based on the particular terms of the statute. The statute has by specific provision quoted above provided for the payment of the store license in addition to any other levied.

The answer to question 2 is to be found in subsection (b) of Section 358, which provides:

"A business or privilege for which such license is issued is under actual sale transferred to a new ownership, in which case, a transfer of

license may be effected by application to the Probate Judge originally issuing such license, and the payment of fifty cents (50c)."

You will note the terms of the statute and the transfer would, under its terms, have to be limited to the transfer of the actual business. If, as you suggest, an attempt is made to transfer a license to an entirely different business, it is my opinion that it would not come within the terms of Subsection (b) of Section 358.

Answering question 3, it is my opinion that rolling stores are not subject to the store license for the reason that licenses generally are levied on fixed places of business and rolling stores do not have such fixed places of business. Moreover Schedule 146 levying a license on rolling stores levies it on a graduated scale similar to the provisions of the Store Act. It would seem that by specific provision, the Legislature attempted to take care of this form of business, leaving the operation of the store tax to groups or chains of stores having fixed places of business.

The answer to question 4 is largely dependent on the particular facts. Section 350 provides in part as follows:

> "In case it should become necessary to remove any business for which a license is required by this Section from one location to another location in the same county and such business be continued as the same kind and character and by the same person or firm as that carried on at a former location, another license shall not be required for such business for the same license year."

Under the facts suggested by you, it would appear that the business originally licensed has not actually been moved, but that a new and different business has been opened. As the question is primarily one of fact, I, of course, cannot give you a categorical answer to your inquiry as the facts in every particular case will have to determine. Roughly, I will say that if it was a bona fide change of location no new license is required; if it is entirely a new business, license would be required.

The answer to question 5 likewise, to a considerable extent, turns on the actual facts in the case. If the two businesses are actually distinct, licenses on two entities are required; if they are actually one entity, even though different goods are kept in different departments, only one license is required.

Answering question 6, it is my opinion that the store-house which you describe would be a store within the meaning of the statute.

I think the answer to your seventh question is largely to be found in Schedule 155.4 which provides:

> "Every person *** etc. opening, operating, etc. one or more stores or mercantile establishments."

It would appear from the facts set out by you that such parties are operating mercantile establishments separate and distinct from that operated by the owner of the store. If this be true, I am of the opinion that there is liability for the license.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

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